TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1915.

No. 664.

CHIN FONG, APPELLANT,

vs.

SAMUEL W. BACKUS, COMMISSIONER OF IMMIGRATION FOR THE PORT OF SAN FRANCISCO.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF CALIFORNIA.

FILED OCTOBER 11, 1915.

(24,947)

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INDEX.

	Original.	Print
Præcipe for transcript of record	1	1
Opinion and order sustaining demurrer and denying petition for the writ of *habeas corpus*	2	2
Amended petition for a writ of *habeas corpus*	4	3
Exhibit A—Immigration file	13	8
Arrival blank	13	8
Telegram from Caminetti, March 7, 1914	14	9
Letter, Backus to Commissioner General, February 19, 1914	15	11
Medical certificate of release, etc	17	12
Request for photograph, etc	19	12
Letter, Edsell to Telegraph Co., Feb. 14, 1914	20	13
Telegram, Yung to Edsell, February 11, 1914	21	13
Telegram, Edsell to Ralston & Richardson, February 6, 1914	22	16
Letter, Backus to Chinese consul general, February 7, 1914	23	16

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., JANUARY 31, 1916.

	Original.	Print
Notice of rejection to Fong	24	17
Notice as to right to appeal	25	17
Findings and decree by Backus, Commissioner.	26	18
Telegram, Backus to Ralston & Richardson, January 28, 1914	28	19
Telegram, Ralston & Richardson to Commissioner, January 28, 1914	29	19
Letter, McCall to Commissioner, Jan. 26, 1914.	30	20
Testimony of Chin Fong	31	20
Letter, White to Commissioner, Jan. 19, 1914	54	23
Memorandum by Lorenzen, inspector, etc., January 21, 1914	35	24
Telegram, Ralston & Richardson to Commissioner, January 19, 1914	37	25
Telegram, Ralston & Richardson to Commissioner, January 20, 1914	38	25
Letter, Sisson to Commissioner, Jan. 15, 1914	39	28
Testimony of Chin Young	41	29
John L. Delmonte	45	33
Israel P. Brand	47	34
Partnership list of Kwong Mow Lan & Co	49	36
Letter, Edsell to Chinese inspector, January 2, 1914	50	37
Letter, McCall to Commissioner, Dec. 29, 1913.	51	37
Testimony of Chin Fong	52	38
Affidavit of Chin Fong	57	44
Israel B. Brand	58	44
John Delmonte	58	44
Blank form 2530	60	45
Order to show cause	63	46
Demurrer to amended petition	64	47
Order on demurrer	65	48
Notice of appeal	66	48
Petition for appeal	67	48
Assignment of errors	68	49
Order allowing appeal	71	51
Citation and service (copy)	73	52
Order allowing appellant to leave jurisdiction of court	74	53
Orders extending time to docket case, etc	75	53
Clerk's certificate	85	59
Citation and service	86	60

1 In the District Court of the United States in and for the Northern District of California.

Clerk's Office.

No. 15614.

In the Matter of CHIN FONG on Habeas Corpus.

Præcipe for Transcript on Appeal.

To the Clerk of said Court.

SIR: Please make up Tr*na*script of Appeal in the above entitled case, to be composed of the following papers, to wit:—

1. Amended Petition for Writ of Habeas Corpus.
2. Order to Show Cause.
3. Demurrer to Amended Petition.
4. Order sustaining Demurrer to Amended Petition for Writ of Habeas Corpus and Denying Amended Petition.

(4*a*. Opinion on similar order filed on original petition herein.)

5. Notice of Appeal.
6. Petition for Appeal.
7. Assignment of Errors.
8. Order Allowing Appeal.
9. Order allowing appellant to leave Jurisdiction of Court.
10. Citation and Copy.
11. Orders Extending Time to Docket Case and associating Washington Counsel.
12. Clerk's Certificate.

McGOWAN AND WORLEY,
Attorneys for Petitioner.

Due service of the within Præcipe for Transcript on Appeal and receipt of a copy thereof is hereby admitted this 14th day of August, 1915.

JNO. W. PRESTON,
U. S. Attorney.

(Endorsed:) Filed Aug. 14, 1915. W. B. Maling, Clerk, by C. W. Calbreath, Deputy Clerk.

2 In the District Court of the United States in and for the Northern District of California, First Division.

No. 15614.

In the Matter of CHIN FONG on Habeas Corpus.

(*Opinion and Order Sustaining Demurrer and Denying Petition for the Writ of Habeas Corpus.*)

McGowan & Worley, Attorneys for petitioner.
John W. Preston, U. S. Att'y and Walter E. Hettman, Ass't U. S. Att'y, Attorneys for Respondent.

The petition shows that petitioner Chin Fong, who had been a resident of the United States for a number of years, departed for China in November 1912; that before he left he applied for a pre-investigation as to his status as a merchant, and a certificate was denied him on the ground that his original entry into this country was surreptitious. Notwithstanding this denial the petitioner left the country, and is now endeavoring to re-enter as a returning Chinese merchant; that he presents the affidavits of a member of the New York firm to which he claims to belong and of two reputable Americans supporting his claim; that notwithstanding these facts he has been denied admission and ordered deported on the same ground that his pre-investigation certificate was denied, that is to say, because his original entry was surreptitious; that in so deciding the immigration department has exceeded its authority, as that question can only be determined under the Exclusion laws by a Justice, Judge or Commissioner. This briefly stated is the body of the present petition for a writ of habeas corpus. To this petition a demurrer has been interposed. I am of the opinion that the demurrer must be sustained. Had the petitioner been content
3 to remain in this country he could have been deported only after a hearing before a Justice, Judge or Commissioner. But as he left the country voluntarily, and even after a pre-investigation certificate was denied him, the question of his right to re-entry lies peculiarly with the immigration department, and as they have found that he is not entitled to re-enter such finding cannot be disturbed. A different rule prevails, and a different tribunal determines in the case of a Chinese applying to enter from that of one already in this country whom it is sought to deport, under the Exclusion laws.

The demurrer will, therefore, be sustained and the application for a writ denied.

April 17th 1914.

M. T. DOOLING, *Judge.*

(Endorsed:) Filed Apr. 17, 1914. W. B. Maling, Clerk, by C. W. Calbreath, Deputy Clerk.

4 In the District Court of the United States in and for the Northern District of California, First Division.

No. 15614.

In the Matter of CHIN FONG on Habeas Corpus.

Amended Petition for Writ of Habeas Corpus.

To the Honorable M. T. Dooling, Judge of the above-entitled Court:

Comes now Chin Guy Get and by leave of Court first had and obtained, files this, his Amended Petition for a Writ of Habeas Corpus herein. The said Amended Petition respectfully shows:

That Chin Fong is unlawfully imprisoned, detained, confined and restrained of his liberty by Samuel W. Backus, Commissioner of Immigration for the Port of San Francisco, at the United States Immigration Station on Angel Island, in the County of Marin, State of California, and in the Northern District of said State.

That the said imprisonment, detention, confinement and restraint are illegal and that the illegality thereof consists in this, to-wit:

That it is claimed by the said Samuel W. Backus, Commissioner of Immigration as aforesaid, that the said Chin Fong is a Chinese person who formerly resided in the United States and who claimed to be engaged in business as a merchant in New York and that during the month of December, 1911, the said Chin Fong applied to the Immigration authorities for the Port of New York to pre-investigate his status as such Chinese merchant so that he might have issued to him a returning Chinese merchant's certificate, which said certificate would insure his immediate landing upon his return to the United States, and that the said application set forth that the said Chin Fong was a member of the firm of Kwong Mow Lan & Co., which is and was a firm engaged in buying,
5 selling, and dealing in merchandise at a fixed place of business, to-wit, at No. 8 Pell Street, Borough of Manhattan, City of New York, State of New York, and that he had been so engaged for more than one year prior thereto, and that he gave the names of two witnessrs other than Chinese, to-wit, Israel P. Brand, of No. 207 Center Street, and John Delmonte, of No. 7, Burling Slip, both of the City of New York; and that in furtherance of said application an examination was conducted by the said Immigration officers for the Port of New York and evidence of the two said white witnesses was taken and the manager of the said store was examined and the said store was inspected and as a result thereof it was reported that the applicant was a merchant for a year prior to the time of his said application and that the store of which he claimed to be a member had no prohibitive features and that these said facts were established by the testimony of two credible white witnesses, and that further, in accordance with the regulations of the then Department of Commerce and Labor, the said application

of Chin Fong to depart as such merchant, together with the evidence taken thereon, were transmitted to the office of the Immigration officer for the Port of Seattle, Washington, through which port the said Chin Fong desired to depart from the United States for China, and that the last-mentioned official denied the said application for an approved returning merchant's certificate, basing said denial upon the said Immigration officer's conclusion from the evidence that though the applicant had been a merchant as required by what are commonly known as the Chinese Exclusion or Restriction acts for one year prior to the date of his said application, that the said applicant had, in the judgment of the said Immigration officer, not established to his satisfaction that he had originally entered the United States in a lawful manner; and further, that an ap-
6 peal was taken by the said applicant to the Secretary of Commerce and Labor, which last-mentioned official sustained the said denial, and that thereafter the said Chin Fong departed from the United States without the said Form 431 Merchant's return certificate, said departure being through the Port of San Francisco on the Steamer Nile on or about the 23d day of November, 1912, and that the said Chin Fong took with him as evidence of his right to return to the United States a Chinese merchant's departure certificate, wherein his claim of mercantile status was set forth exactly the same as had been contained in his said application for a pre-investigation of his status, and that at the conclusion of the said Chin Fong's temporary sojourn in China he returned to the United States, arriving at the Port of San Francisco on the Steamer "Persia" on or about the 23d day of December, 1913, and being admitted as such returning alien under the General Immigration laws he thereupon made application to the said Commissioner of Immigration for the Port of San Francisco to re-enter the United States as a returning Chinese merchant under the Chinese Exclusion or Restriction — hereinafter mentioned and present his said merchant's departure certificate as a basis of the examination to be conducted by the said Commissioner as to the mercantile status of the said Chin Fong, and that in the course of the examination of the proofs and evidence submitted and requested to be heard on the part of the said Chin Fong it was further ascertained and determined that the said firm of Kwong Mow Lan & Co. was a genuine mercantile establishment, such as is contemplated by the Chinese Exclusion or Restriction Acts; and it was further testified by the said two white witnesses, both of whom being reported by the examining Immigration Inspector as being credible witnesses, that the said Chin Fong had been such a merchant for more than one year prior to the date of his said departure for China, and that during said time he had engaged in the performance of no manual labor of any kind or description whatsoever save and excepting only such duties
7 as were incumbent upon him in the conduct of his business as such merchant and that the report of the Immigration Inspector in charge of the Chinese Division of the Immigration service of the City of New York was to the effect that the mercantile status of the said Chin Fong for the year prior to his departure afore-

said for China had been established in full and complete compliance with the provisions of Section 2 of the Act of Congress of November 3d, 1893, entitled: "An Act to amend an Act entitled 'An Act to prohibit the coming of Chinese persons into the United States,' approved May 5th, 1892," which said section prescribes the evidence necessary to present by a Chinese person applying to re-enter the United States after a temporary absence therefrom as a Chinese merchant claiming a commercial domicile therein.

Your petitioner further alleges that notwithstanding the presentation of the said evidence showing the mercantile standing of the said Chin Fong, said Commissioner of Immigration for the Port of San Francisco denied the application of the said Chin Fong to re-enter the United States. The denial of the said Commissioner was not based upon any deficiency in the evidence presented to establish the mercantile status of the said Chin Fong for the year prior to his departure from this country for China, as required in said Section 2, but on the contrary, the denial of the said Commissioner was based upon the conclusion and opinion of the said Commissioner that the said Chin Fong had not established, to the satisfaction of the said Commissioner of Immigration, that his original entry into the United States had been accomplished in a lawful manner and that the said Chin Fong was therefore illegally in the United States under and by virtue of the provisions of Section 12 of the Act of Congress of May 6th, 1882, as amended and added to by the Act of
8 Congress of July 5th, 1884, which said last-mentioned Act was entitled: "An Act to amend an Act entitled 'An Act to execute certain treaty stipulations relating to Chinese,' approved May 6th, 1882," and under and by virtue of the provisions of Section 13 of the Act of Congress of September 13th, 1888, entitled: "An Act to prohibit the coming of Chinese laborers to the United States." And it is further claimed by the said Commissioner of Immigration for the Port of San Francisco that the legality of the residence of the said Chin Fong in the United States prior to his said departure for China has not been determined by any "Justice, Judge, or Commissioner of a Court of the United States," the said Commissioner contending that upon the application of the said Chin Fong to re-enter the United States he, the said Commissioner of Immigration, has the right to determine the question of the mercantile status of the said Chin Fong for the year prior to his departure for China, as in said Section 2 provided, and in addition thereto, has the right to determine the legality of the original entry of the said Chin Fong into the United States and also to determine the legality of the residence of the said Chin Fong in the United States prior to the said period of one year mentioned in the said Section 2 of the Act of November 3d, 1893, aforesaid, and notwithstanding the compliance with the provisions of said Section 2 by the said Chin Fong, the said Commissioner of Immigration for the Port of San Francisco denied the application of said Chin Fong to re-enter the United States as a returning merchant having a commercial domicile therein, basing said denial upon the conclusion by the said Commissioner that the original entry of the said Chin Fong into the United States in 1897 was illegal for

the reason that the said Chin Fong did not satisfactorily account to the said Commissioner for the present whereabouts of the papers on which he claimed to have been originally admitted. That
9 from the excluding decision of the said Commissioner of Immigration an appeal was taken to the Secretary of the Department of Labor and the said Secretary of Labor affirmed the excluding decision of the said Commissioner of Immigration for the Port of San Francisco.

But on the contrary, your petitioner alleges that the action of the said Commissioner and the said Secretary of Labor was in excess of their jurisdiction in this, that the said Chin Fong having presented the evidence required by the said Act of Congress last above-mentioned, that it was the duty of the said Commissioner and the duty of the said Secretary of Labor to have permitted the said Chin Fong to re-enter the United States as such returning Chinese merchant, and your petitioner does further allege the fact that the right of the said Chin Fong to make a temporary visit to China as such merchant is guaranteed under the terms and provisions of the Treaty between the United States and China dated November 17th, 1880, and further, said excluding decisions are in violation and in excess of the statutory authority vested in the said Commissioner of Immigration and the said Secretary of Labor in this, that the said Act of November 3d, 1893, in Section 2 thereof, provides: "That the term 'merchant,' as employed herein and the acts of which this is amendatory shall have the following meaning and none other:" And that the said Chin Fong having complied with the said Act and having submitted the evidence required by said Section 2 and from the witnesses therein required, that the said Commissioner of Immigration and the said Secretary should have ordered the re-admission of the said Chin Fong into the United States, and that any other action would have been in excess of and in violation of their statutory authority and hence an abuse of the discretion vested in them by statute, and their
10 said exclusing decisions are for said reason null and void, and violates petitioner's rights under said treaty.

Your petitioner further alleges, upon information and belief, that the said Chin Fong entered the United States in a lawful manner during the year 1897 upon a merchant's paper issued under the provisions of Section 6 of the Act of Congress of May 6th, 1882, aforesaid, as amended and added to by the said Act of Congress of July 5th, 1884, and that to facilitate in establishing the issuance of the said certificate and as evidence that the said Chin Fong would become a merchant in the United States after his arrival thereat, he had prepared and forwarded to him in China, papers from the firm of Young Wah Hong Co., of the City of New York, State of New York, showing that the said Chin Foon would become a merchant and member of the said firm after his entry into the United States. And your petitioner further alleges that there was no fraud practiced in the entry of the said Chin Fong into the United States or in his subsequent residence therein.

Your petitioner further alleges, upon information and belief, that the said Chin Fong departed from the United States, for China, after

he had been denied a merchant's return certificate, upon the express permission of the said Immigration authorities that he might so depart and upon his return to the United States present further evidence on his application for re-admission. And your petitioner further alleges, upon information and belief, that the said Chin Fong departed from the United States for China upon the advice of his attorneys at New York and Washington, D. C., that, the said Chin Fong having established his mercantile status as in this petition alleged, the said Immigration officers were acting in excess of their jurisdiction and without statutory authority in denying the said Chin Fong a merchant's return certificate.

And your petitioner further alleges that the said Chin Fong has never had a hearing before competent or legal authority in-
11 vested with power to determine the matter as to whether his prior residence in the United States was legal or otherwise, or whether the method of his original entry into the United States was legal or otherwise, and in this connection your petitioner further alleges that the action of the said Commissioner and of the said Secretary of Labor in determining and deciding that the said Chin Fong had originally entered the United States in an illegal manner, was without any supporting evidence and an abuse of discretion and was without their authority and jurisdiction and in violation of Section 12 of the Act of Congress of May 6th, 1882, entitled: "An Act to execute certain Treaty stipulations relating to Chinese, and also in violation of the terms and provisions of Section 13 of the Act of Congress of September 13th, 1888, entitled: "An Act to prohibit the coming of Chinese laborers to the United States," and in violation of the Treaty rights of the said petitioner as guaranteed in the said Treaty hereinabove referred to and is further a usurpation of the rights and functions of the judicial branch of the Government as especially delegated and conferred by the said Acts hereinabove mentioned.

That attached hereto and made a part hereof is a complete copy of the Immigration record of the application of the said Chin Fong to depart from and return to the United States as a Chinese merchant, together with the evidence given in suppose of his said application to re-enter the United States, and that the same is marked "Exhibit A."

That it is the intention of the said Commissioner of Immigration to deport the said Chin Fong out of the United States on the Steamer "Nile," sailing from the Port of San Francisco on or about the 9th day of May, 1914, at the hour of One O'clock P. M., and unless this Court intervenes on behalf of the said Chin Fong, the said Chin Fong will on said date be deported for China.

12 Wherefore, your petitioner prays, that a Writ of Habeas Corpus may be granted, directed to the said Samuel W. Backus, Commissioner of Immigration as aforesaid, commanding him to have the body of the said Chin Fong before Your Honor at a time and place therein to be specified, to do and receive what shall then and there be commanded by Your Honor concerning him, to-

gether with the time and cause of his detention, and said writ, and that he may be restored to his liberty.

CHIN GUY (Chinese characters) GET,
Petitioner.

McGOWAN AND WORLEY,
Attorneys for Petitioner.

Dated at San Francisco, California, May 6, 1914.

UNITED STATES OF AMERICA,
State and Northern District of California,
City and County of San Francisco, ss:

Chin Guy Get, being first duly sworn, upon his oath according to law deposes and says:

That he is the petitioner above-named, and that he has heard read the foregoing amended petition and knows the contents thereof, and that the same is true of his own knowledge except as to those matters therein stated on his information and belief, and that as to such matters he believes it to be true.

CHIN (Chinese characters) GUY GET,
Petitioner.

Subscribed and sworn to before me this 6th day of May, 1914.
[SEAL.] THOMAS S. BURNES,
Notary Public in and for the City and County of San Francisco, State of California.

13 Copy.

Arrival.

Number 13137½.
Name, Chin Fong.
Accompanied by —— ——.
Class, M'ch't Vis.
Destination, New York.
Vessel, Persia.
Date, Dec. 23, 1913.
Remarks: ——.

Reported (date) Jan'y 26, 1914.
Favorably.
(Signed) J. H. McCALL, *Inspector.*

Forwarded to law section (date) Jan. 26, 1914.
(Signed) CHARLES MEHAN,
Inspector in Charge.

Disapproved (date) Feb. 6, 1914.
(Signed) W. H. WILKINSON,
For Law Section.

Excluded (date) 2-6-'14.
(Signed) H. EDSELL,
Acting Commissioner.

Appealed by Ralston & Richardson, Wash., D. C., (date) Mar. 9.
Exclusion ordered by Department decision (date) March 9/14.
Admitted—deported (date) —— —, —.

——— ———,
For Deportation & Detention Division.

Certificate of Identity, authorized by —— —— (date) —— —, —.
Certificate of Identity No. —. Issued — (date) —— —, —.

14 (Copy.) Form 260.

Western Union Telegram.

Western Union Telegraph and Cable.

Theo. N. Vail, President.

Receivers No. —. Time Filed 3 P. M. Check —.

Send the following Telegram, subject to the terms on back hereof, which are hereby agreed to.

WASHINGTON, D. C., March 7, 1914.

Dedicant—Chin Fong.
(Signed) CAMINETTI.

March 7—3 P. M.
J. M. NEWMAN, *Watchman.*

(Stamped) 9 15 P M
1914
Mar
9

All telegrams taken by this company are subject to the following terms:

To guard against mistakes or delays, the sender of a telegram should order it repeated, that is, telegraphed back to the originating office for comparison. For this, one-half the unrepeated telegram rate is charged in addition. Unless otherwise indicated on its face, this is an unrepeated telegram and paid for as such, in consideration whereof it is agreed between the sender of the telegram and this Company as follows:

1. The Company shall not be liable for mistakes or delays in the transmission or delivery, or for non-delivery, of any unrepeated telegram, beyond the amount received for sending the same; nor for mistakes or delays in the transmission or delivery, or for non-delivery, of any repeated telegram, beyond fifty times the sum received for sending the same, unless specially valued; nor in any case for delays arising from unavoidable interruption in the working of its lines; nor for errors in cipher or obscure telegrams.

2. In any event the Company shall not be liable for damages for

any mistakes or delays in the transmission or delivery, or for the non-delivery, of this telegram, whether caused by the negligence of its servants or otherwise, beyond the sum of fifty dollars, at which amount this telegram is hereby valued, unless a greater value is stated in writing hereon at the time the telegram is offered to the Company for transmission, and an additional sum paid or agreed to be paid on such value equal to one-tenth of one percent. thereof.

3. The Company is hereby made the agent of the sender, without liability, to forward this telegram over the lines of any other Company when necessary to reach its destination.

4. Telegrams will be delivered free within one-half mile of the Company's office in towns of 5,000 population or less, and within one mile of such office in other cities or towns. Beyond these limits the Company does not undertake to make delivery, but will, without liability, at the sender's request, as his agent and at his expense, endeavor to contract for him for such delivery at a reasonable price.

5. No responsibility attaches to this Company concerning telegrams until the same are accepted at one of its transmitting offices; and if a telegram is sent to such office by one of the Company's messengers, he acts for that purpose as the agent of the sender.

6. The Company will not be liable for damages or statutory penalties in any case where the claim is not presented in writing within sixty days after the telegram is filed with the Company for transmission.

7. No employee of the Company is authorized to vary the foregoing.

THE WESTERN UNION TELEGRAPH COMPANY, INC.
THEO. N. VAIL, *President.*

Classes of Service.

Telegrams.

A full-rate expedited service.

Night Telegrams.

Accepted up to 2.00 a. m. at reduced rates to be sent during the night and delivered not earlier than the morning of the next ensuing business day.

Day Letters.

A deferred day service at rates lower than the standard telegram rates as follows: One and one-half times the standard night letter rate for the transmission of 50 words or less and one-fifth of the initial rate for each additional 10 words or less. Subordinate to the priority of transmission and delivery of regular telegrams. Must be written in plain English. Code language not permissible. Telephonic delivery permissible. Day Letters received subject to express understanding that the Company only undertakes delivery of the

same on the day of their date subject to condition that sufficient time remains for such transmission and delivery during regular office hours, subject to priority of the transmission of regular telegrams.

Night Letters.

Accepted up to midnight for delivery on the morning of the next ensuing business day, at rates still lower than standard night telegram rates, as follows: The standard day rate for 10 words shall be charged for the transmission of 50 words or less, and one-fifth of such standard day rate for 10 words shall be charged for each additional 10 words or less. Must be written in plain English. Code language not permissible. Mail delivery, postage prepaid, permissible.

15 U. S. Department of Labor,
Immigration Service.

In answering refer to No. 13137½.

Office of the Commissioner, Angel Island Station, via Ferry Post Office, San Francisco, Cal.

February 19, 1914.

Commissioner-General of Immigration, Washington, D. C.:

Transmitted herewith is the record on appeal in the case of Chin Fong, ex SS "Persia" December 23, 1913. The applicant will be represented before the Department by Attorneys Ralston and Richardson, who entered appearance in this case by telegram dated January 19, 1914.

The third copy of the record is being transmitted herewith for use of the attorneys of record, attention being invited to the fact that counsel for applicant has not yet had an opportunity to inspect the record, there being no local counsel in this case. It is request- that this duplicate copy be returned to the files of this office when it has served its purpose.

For the reasons given in the opinion of denial, pages 28 and 29 of the record, I have to recommend that the excluding decision be affirmed.

The following exhibit is enclosed, which please return:

Seattle File No. 28,913.

Should the Department's decision in this case require the deportation of the applicant, it is requested that this office
16 be advised on or before March 2, 1914; or on or before March 17, 1914, in order that he may be placed upon the next departing vessel of the line upon which he came to the United States.

———, *Commissioner.*

Exact copy as signed by Samuel W. Backus.
Mailed Feb. 19, 1914, by A. H.

W. H. W./A. S. H.

Inclosure No. 16807.

17 (Copy.)

Treasury Department
Public Health Service.

Form 8951.

Medical Certificate of Release.

Port of SAN FRANCISCO, CAL., 12/28/13. *191–.*

Commissioner of Immigration:

This is to certify that Chin Fong, 13137½, Age —, native of China, who was held for observation and who arrived 12/23/13, *191–*, per S. S. Persia has been released today.

(Signed) C. W. JENKINS,
Ass't Surgeon, P. H. S.

New Y-.

18 (Copy.)

13137½.

Copy.
[1]*
[2]*
[7]*
7*a*
[18]*
[18*a*]*
19
[20]*
21
[25]*
[27]*
Action Sheet

19 (Copy.)

Form 2512.

ANGEL ISLAND, CAL., Feb. 17, 1914.

Chinese Inspector in Charge, Angel Island, Cal.

SIR: I request that the photographer make 1 [life']† photograph of copy applicant in case No. 13137½ S. S. Persia Arriving Dec. 23, 1913, to complete the record.

(Sgd.) A. HARRISON, *Inspector.*

R. Lym

Feb. 17, 1914.

Above request O. K.

(Signed) CHARLES MEHAN,
Chinese Inspector in Charge.

[* Words and figures enclosed in brackets erased in copy.]

Received the above photograph this 17 day of Feb., 1914.
(Sgd.) A. HARRISON, *Inspector.*

Cross *of* copy or life, and insert number of photographs desired.

(To be made in duplicate.)

20 (Copy.)

U. S. Department of Labor,
Immigration Service.

In answering refer to No. —, Personal.

Office of the Commissioner, Angel Island Station, via Ferry Post Office, San Francisco, Cal.

February 14, 1914.

The Postal-Telegraph Cable Co., Battery & Bush Streets, San Francisco, Cal.

GENTLEMEN: Kindly deliver to bearer, Mr. Charlie E. Maynard, the sum of $20.00 which was telegraph- to me from New York by Chin Yung.

Respectfully,

——— ———,
Acting Commissioner.

Exact copy as signed by H. Edsell.
Mailed Feb. 14, 1914, by A. H.

H. E./W. M.

21 (Copy.) Form 2289.

Western Union Night Letter

Western Union Telegraph and Cable.
Theo. N. Vail, President.

Receivers No. —. Time Filed —. Check —.
Duffy 9:45 A M 17 Night letter.
2/12/14.

Send the following Night Letter, subject to the terms on back hereof, which are hereby agreed to.

NEW YORK, February 11, 1914.

Commissioner Edsell, Angel Island, Cal.:

Following instructions of Attorney Ralston I telegraph you today twenty dollars for Chin Fong board pending appeal.

CHIN YUNG.

13137½.
2/16/14.
O. K.
(Sgd.) E. L. KIMMEL.

All night letters taken by this company are subject to the following terms:

The Western Union Telegraph Company will receive not later than midnight night letters, to be transmitted only for delivery on the morning of the next ensuing business day, at rates still lower than its standard night telegram rates, as follows: The standard day rates for ten words shall be charged for the transmission of fifty words or less, and one-fifth of such standard day rate for ten words shall be charged for each additional ten words or less.

To guard against mistakes or delays, the sender of a night letter should order it repeated, that is, telegraphed back to the originating office for comparison. For this, one-half the unrepeated night letter rate is charged in addition. Unless otherwise indicated on its face, this is an unrepeated night letter and paid for as such, in consideration whereof it is agreed between the sender of the night letter and this Company as follows:

1. The Company shall not be liable for mistakes or delays in the transmission or delivery, or for non-delivery, of any unrepeated night letter, beyond the amount received for sending the same; nor for mistakes or delays in the transmission or delivery, or for non-deelivery, of any repeated night letter, beyond fifty times the sum received for sending the same, unless specially valued; nor in any case for delays arising from unavoidable interruption in the working of its lines; nor for errors in obscure night letters.

2. In any event the Company shall not be liable for damages for any mistakes or delay in the transmission or delivery, or for the non-delivery of this night letter, whether caused by the negligence of its servants or otherwise, beyond the sum of fifty dollars, at which amount this night letter is hereby valued, unless a greater value is stated in writing hereon at the time the night letter is offered to the Company for transmission, and an additional sum paid or agreed to be paid based on such value equal to one-tenth of one per cent thereof.

3. The Company is hereby made the agent of the sender, without liability, to forward this night letter over the lines of any other Company when necessary to reach its destination.

4. Night letters will be delivered free within one-half mile of the Company's office in towns of 5,000 population or less, and within one mile of such office in other cities of towns. Beyond these limits the Company does not undertake to make delivery, but will, without liability, at the sender's request, as his agent and at his expense, endeavor to contract for him for such delivery at a reasonable price.

5. No responsibility attaches to this Company concerning night letters until the same are accepted at one of its transmitting offices, and if a night letter is sent to such office by one of the Company's messengers, he acts for that purpose as the agent of the sender.

6. The Company will not be liable for damages or statutory penalties in any case where the claim is not presented in writing within sixty days after the night letter is filed with the Company for transmission.

In further consideration of the reduced rate for this special "night letter" service, the following special terms are hereby agreed to:

A. Night letters may at the option of the Telegraph Company be mailed at destination to the addressees, and the Company shall be deemed to have discharged its obligation in such cases with respect to delivery by mailing such night letters at destination, postage prepaid.

B. Night letters shall be written in plain English. Code language is not permissible.

7. No employee of the Company is authorized to vary the foregoing.

THE WESTERN UNION TELEGRAPH COMPANY, INC.
THEO. N. VAIL, *President.*

Classes of Service.

Telegrams.

A full-rate expedited service.

Night Telegrams.

Accepted up to 2.00 a. m. at reduced rates to be sent during the night and delivered not earlier than the morning of the next ensuing business day.

Day Letters.

A deferred day service at rates lower than the standard telegram rates as follows: One and one-half times the standard night letter rate for the transmission of 50 words or less and one-fifth of the initial rate for each additional 10 words or less. Subordinate to the priority of transmission and delivery of regular telegrams. Must be written in plain English. Code language not permissible. Telephonic delivery permissible. Day Letters received subject to express understanding that the Company only undertakes delivery of the same on the day of their date subject to conditions that sufficient time remains for such transmission and delivery during regular office hours, subject to priority of the transmission of regular telegrams.

Night Letters.

Accepted up to midnight for delivery on the morning of the next ensuing business day, at rates still lower than standard night tele-

gram rates, as follows: The standard day rate for 10 words shall be charged for the transmission of 50 words or less, and one-fifth of such standard day rate for 10 words shall be charged for each additional 10 words or less. Must be written in plain English. Code language not permissible. Mail delivery, postage prepaid, permissible.

22 (Copy.)

ANGEL ISLAND, February 6, 1914.

Ralston and Richardson, Attorneys at Law, Washington, D. C.:

Your telegram January 28. Chin Fong this day denied admission. Immediate provision necessary to cover maintenance pending appeal. Deposit twenty dollars required.

EDSELL.

W. H. W./A. S. H.

13137½.

Attest:

——— ———,
Acting Commissioner.

Commercial rate. Collect.

23 (Copy.)

U. S. Department of Labor,
Immigration Service.

In answering refer to No. 13137½.

Office of the Commissioner, Angel Island Station, via Ferry Post Office, San Francisco, Cal.

February 7, 1914.

Chinese Consul General, 649 Kearny Street, San Francisco, Cal.

SIR: In accordance with rule 5 of the regulations governing the admission of Chinese, approved Ap. 18, 1910, you are hereby notified that Chin Fong No. 13137½ S. S. "Persia" arriving December 23, 1913, an alleged Merchant viseed, has been refused a landing, and that you will be permitted to examine the record in said case if you so desire.

Respectfully,

——— ———,
Commissioner.

Exact copy as signed by Samuel W. Backus. Mailed Feb. 7, 1914, By B.

C. T./A. A. G.

24

(Copy.)

Notice to Rejected Chinese Applicant under Rule 5.

Department of Commerce and Labor,
Immigration Service.

#13137½.
Chin Fong, Merchant (Vis.) S. S. "Persia," Dec. 23, 1913.

PORT OF SAN FRANCISCO, CAL.,
February 7, 1914.

You are hereby notified that your application for admission to the United States is denied. From this decision you have the right of appeal to the Secretary of Commerce and Labor. If you desire to appeal, you must notify the officer in charge at this port within two days of the receipt of this notice.

Translation.

(Five lines of Chinese characters.)

(Signed) SAMUEL W. BACKUS,
Commissioner.

C. T.

25

(Copy.)

U. S. Immigration Service, Chinese Division.

Chin Fong, No. 13137½, ex S. S. Persia, Dec. 23, 1913.

SAN FRANCISCO, CAL., 2-7, 1914.

SIR: You are hereby notified that after due consideration of your case the Honorable Commissioner of Immigration has refused you admission to the United States.

There is reserved for you the right of appeal to the Secretary of the Department of Commerce and Labor through an attorney or reasonable representative. You may designate who shall be your representative in this matter, the name and address will be written below, and the party duly notified. Notice of appeal must be filed within two days.

Your signature in acknowledgment of all the foregoing is requested.

Respectfully,

(Signed) J. E. GARDNER,
(Act'g) Inspector in Charge Chinese Division.

Chan Kit, c/o Dan Sang Tong, 842 Grant Ave.

(Acknowledged) (Chinese signature) Applicant.
Applicant notified by Robt. Lym, Interpreter.
2-7-1914, 4.00 P. M.
(Return this notice to Inspector in Charge, Chinese Division.)

3—664

(Copy.)

26 U. S. Department of Labor,
Immigration Service.

In answering refer to No. 13137½.

Office of the Commissioner, Angel Island Station, via Ferry Post-office, San Francisco, Cal.

In the Matter of CHIN FONG, S. S. Persia, December 23, 1913.

Application to Land as a Returning Merchant (Viseed), New York.

Finding and Decree.

The applicant applied for preinvestigation of his alleged status as a merchant (Form 431), in December, 1911, but his application was denied by the Seattle office, and an appeal from that decision dismissed by the Bureau for the reason that it was satisfactorily shown at that time that the applicant had fraudulently secured his original admission to the United States, it having been claimed by him that he entered this country at or near Niagara Falls, New York, in 1897 on "merchant's papers" sent to him in China by the Young Wah Hong Company at New York. It was first claimed by the applicant, in the present case, that he was admitted at Niagara Falls in 1906, but when confronted with his previous testimony he denied the last-mentioned statement and reiterated the year first-mentioned as the date of his original entry, and stated that he was then admitted as a section six Canton merchant on papers secured by him in that city.

Niagara Falls was not a port of entry for Chinese in 1906,
27 and the applicant has not satisfactorily accounted for the present whereabouts of the papers on which he claims to have been admitted, so that it must be concluded that his domicile in this country was unlawful; and as the Bureau has sustained the action of the Seattle office in refusing his application for Form 431, the applicant is denied admission and advised of his right of appeal.

Dated this 6th day of February, 1914.

(Signed) SAMUEL W. BACKUS,
Commissioner.

W. H. W./A. S. H.

28

(Copy.)

ANGEL ISLAND, CAL., Jan. 28, 1914.

Ralston and Richardson, Attorneys-at-law. Washington, D. C.:

Your telegram twenty-eight instant. Case Chin Fong under consideration. Decision probably reached within week.

BACKUS.

W. H. W./A. S. H.

13137½.

Attest:

—— ——, *Commissioner.*

Commercial rate. Collect.

Exact copy as signed by Samuel W. Backus. Mailed Jan. 28 1914. By B.

(Copy.)

29

Western Union Telegram.

Form 260.

Western Union Telegraph and Cable.
Theo. N. Vail, President.

Receiver's No. —.
Time filed —.
Check —.

Received at S. E. Corner Pine and Montgomery Sts., San Francisco.
W283ch ed 12.

Duplicate of Telephoned Telegram.

WASHINGTON, D. C., Jan. 28, 1914.

Telephone No. —.
Telephoned to A. M. D.
Time 3:20 P. M.
By N. C. To be Mld.

Commissioner of Immigration, San Francisco, Calif.:

Kindly advise status Chin Fong arrived December 23 S. S. Persia.

RALSTON AND RICHARDSON.

3.12 P. M.

Law.
Chd. 13137½.

30 (Copy.)

U. S. Department of Labor,
Immigration Service.

In answering refer to No. —.

Office of the Commissioner, Angel Island Station, via Ferry Post-office, San Francisco, Cal.

Jan. 26, 1914.

Commissioner of Immigration, Through Chinese Inspector in Charge, Port of San Francisco:

In re Chin Fong, Merchant, Vis., New York, No. 13137½ (SS "Persia", Dec. 23, 1913):

This applicant applied for Form 431 at the office at New York under No. 2495/44, Seattle No. 28913, and his application was denied on the ground that entry into the United States was gained through fraud. The Bureau in its letter of Feb. 21, 1912, No. 53422/27, affirmed the excluding decision.

The identical point which was passed upon at that time squarely arises in the present instance.

I can see no reason why a different ruling should be made at this writing and recommend that adverse action be again taken.

Attorneys Ralston & Richardson, under date of Jan. 19, 1914, filed an appearance and appeal if necessary.

(Signed) J. H. McCALL,
Chinese Inspector.

J. H. M.

31 ANGEL ISLAND, CALIF., Jan. 24, 1914.

#13137½, Chin Fong, Merchant Vis., New York, "Persia," Dec. 23, 1913.

Inspector: J. H. McCall.
Interpreter: R. F. Lym.
Stenographer: W. A. Foster.

Re-examination of Applicant. Sworn.

(This witness speaks the See Yip dialect, which is the Interpreter's original dialect. This applicant was instructed to notify the Inspector if he did not understand the Interpreter at any time.)

Q. What are your names?
A. Chin Fong, Chin Ai Chee.
Q. Have you any other names?
A. No.
Q. Are you the person who testified in this office on Dec. 29, 1913?
A. Yes.
Q. Is this a tracing of your signature? (Showing Chinese signature at end of applicant's testimony.)
A. Yes.

Q. Do you wish to make any alterations or corrections in that statement?

A. No.

Q. You are absolutely positive that you do not care to make any alterations?

A. Yes, I am sure.

Q. (Showing photo on departure affidavit. Note. This person departed with this single affidavit and without a duplicate. See report of Record room under date of Jan. 21st.) Who is that?

A. Myself.

Q. How many trips have you made to China?

A. Only this trip.

Q. Have you ever at any time ever appeared before the Immigration officers and testified?

A. Yes, I have testified in the New York office.

Q. When?

A. C. R. 1-10.

Q. In what case?

A. In my own case.

Q. What case was that? What was your own case at that time?

A. Applied for Form 431.

Q. Did you get it?

A. No. I received a letter stating I was acknowledged as a merchant by the office but to defer my trip until a further date.

Q. Are you sure you are telling us the truth?

A. Yes.

Q. Do you wish to make any possible excuse or equivocation at all?

A. I do not.

Q. (Showing photo on Form 431 Dec., 1911, New York, No. 2495/444, Seattle No. 28913.) Whose photograph is that?

A. That is myself.

Q. The record shows that under date of Feb. 26, 1912, file No. 28913, that the certificate you sought could not be granted. Why do you testify as you do?

A. I was told by the Chinese who represented me in my case that the office had acknowledged my mercantile status and that I could make the trip, and so I made it.

Q. But your understanding seems to be an impossibility for the reason that the letter above mentioned is addressed to Chin Fong, care Kwong Mow Lan Co., 8 Pell Street, New York City. That shows the letter written to you by the Commissioner at Seattle was addressed to you personally and that in accordance with the postal laws and regulations that communication could only have been delivered to yourself.

A. I never received such a communication while I was in New York.

Q. Do you expect this office, if you are a resident of New York City as you claimed in your testimony of Dec. 29th in this office, do you expect us to accept such a statement as that, that you did not receive a communication addressed to you in a Government envelope?

A. The Interpreter I had employed representing me might have kept the communication himself and not have let me have it. I don't know how to read or write myself in English.

32 Q. You were represented by an attorney, Mr. Storey?

A. Yes. He told the Interpreter that was representing me that the decision in Washington said that I could go to China and that I was acknowledged a merchant.

Q. Your statements are inconsistent and not in accord with the record. We will therefore rely on the record rather than your statements. You also testified that you were examined in Niagara Falls about the 4th month of K. S. 32. Is that correct?

A. Yes.

Q. Do you wish to make any alterations or corrections in any particular?

A. No.

Q. On Jan. 3, 1912, in New York, you testified that you first entered the United States K. S. 22-11 at the two statements in the two applications?

A. I said K. S. 22. I did not say K. S. 32 in my last testimony.

Q. Just a moment ago you said that the statement of K. S. 32 was correct. You verified your original testimony before being confronted with the New York record.

A. I though- you meant K. S. 22 instead of K. S. 32 when you asked me whether it was correct or not.

Q. Why is it you give a different month in the two different records?

A. I really came in K. S. 22, arriving in the United States across the border in the 5th month. I left China in the 4th month.

Q. How did you cross the border?

A. All the aliens were stopping at Montreal and there were two white men who called our names and we went to Niagara Falls with them.

Q. Didn't you cross the border surruptitiously and not through the regular Government channels?

A. I was examined in a big building in Niagara Falls and after my examination I was taken to the train by the same man who examined me and put me on the train to New York.

Q. You claim to have had a Section 6 paper and to have lost it. Is that correct?

A. I do not know exactly what kind of a paper I had. I was young then—I do not know what kind of a paper, but I had a paper.

Q. Describe it?

A. Two page paper with my photograph attached to it and a lot of writing on it. There was also a gold seal on it. I got it at Canton City.

Q. Where is that paper now?

A. At the time our store moved we lost it.

Q. What store?

A. Yung Wah Tong.

Q. When did you last see it—what date?

A. K. S. 34-7 or 8.

Q. Why is it that you do not give the same testimony today as you did on Dec. 29th as to the date? Can t you give the same testimony within a month?

A. (No answer.)

Q. As a matter of fact, according to the report at New York City no such move ever took place. How do you account for that?

A. It was formerly on Mott St. and then moved to Pell Street. There was such a move.

Q. What number Pell Street?

A. The store is not in existence now.

Q. What was the number at that time?

A. 33.

Q. You are also advised that the firm who now occupied 33 Pell Street has been there for many years last past which also shows that your statement is incorrect. Why do you make such statements?

A. The store was sold to this Sam Yup man, named Ah Fong. The name of the firm was Fong Kee.

Q. Is Fong Kee at 33 Pell Street now?

A. Yes.

Q. You are advised that this is not a correct statement according to the investigation at New York. Why not tell the truth?

A. There is a Fong Kee.

33 Q. Do you expect us to believe you in preference to the investigation conducted at New York City by members of the Immigration Service?

A. I did not have to come in illegally at that time. Yung Wah Tong got my papers from me in China and the rules of the Exclusion Act at that time were not so severe as it is now and it was easy for me to get in at that time. I did not have to come — this country at that time illegally.

Q. Have you anything further to state?

A. No.

Q. (Through Interpreter Ed. L. Park.) Have you understood the Interpreter?

A. Yes. (Signed in Chinese characters.)

(Chinese signature.)

J. H. M./W. A. F./126/14.
1936/20.

34

(Copy.)

Department of Commerce and Labor,
Immigration Service.

OFFICE OF THE COMMISSIONER,
SEATTLE, WASH., January 19, 1914.

No. 28,914.

Commissioner of Immigration, San Francisco, Cal.:

At the instance of the Chinese Inspector in Charge, New York City, there is transmitted herewith our file covering the status of one

Chin Fong who was denied a return certificate as a domiciled merchant under date of February 26, 1912. Please return this record when it has served its purpose.

The New York office states that this Chinese is now an applicant at your port for admission, and that your file in his case is No. 13137½.

(Signed) HENRY M. WHITE,
Commissioner.

Inc. 15827.
H. A. M./W. C.
(Stamped:) Received P. M., 1914, Jan. 22.
Ch. D.
McCall.

35 (Copy.)

Form 2545.

Department of Labor,
Immigration Service,
Office of the Commissioner, San Francisco, Cal.

1/21/'14.

Memorandum for the Commissioner.

(Chinese Division.)

In re Chin Fong, 13137½. [Native departing.]*
[No. 12017.]* Persia 12/23/'13.
[Herewith]* No duplicate on file. Nov. 23, 1912 "Nile," wharf book shows Chin Fong, age 33, merchant, born in China, firm Kwong Mon Lan Co., 8 Pell St., N. Y. Notation "One paper."

(Signed) C. H. BALL,
Searcher.

(Signed) LORENZEN,
Inspector in Charge, Records & Maintenance Section.

36 (Copy.)

Copy.

Department of Labor.

Jan. 20, 1914.

Respectfully forwarded to Insp. McCall.

C. M.

Await record from Seattle.
1-20-14.

[* Words and figures enclosed in brackets erased in copy.]

37

(Copy.) Form 260.

Western Union Telegram.

Western Union Telegraph and Cable.

Theo. N. Vail, President.

Receiver's No. —.
Time Filed —.
Check —.

Duplicate of Telephoned Telegram.

Received at S. E. Corner Pine and Montgomery Sts., San Francisco.
D317 EA 15. 1685
1914 Jan 19 PM 4 31.
WASHINGTON DC 19.

Commissioner of Immigration, San Francisco:

Please enter our appearance case Chin Fong and in event denial note appeal for us.

RALSTON AND RICHARDSON.
McCALL.

ChD.

Telephone No. —.
Telephoned to Kenney.
Time 4 34.
By F. B. To be Mld.

38

(Copy.)

Form 2589.

Western Union Day Letter.

Western Union Telegraph and Cable.

Theo. N. Vail, President.

Receiver's No. —. Time Filed —. Check —.

Send the following Day Leter, subject to the terms on back hereof, which are hereby agreed to.

Commissioner of Immigration, Angel Island, Cal.:

Please enter our appearance case Chin Fong and in event denial note appeal for us.

RALSTON & RICHARDSON.

Rec'd 4:35 P. M.
By Kenney.

(Stamped) Received
1:30 P. M.
1914
Jan.
20

All day letters taken by this company shall be subject to the following terms:

The Western Union Telegraph Company will receive day letters, to be transmitted at rates lower than its standard telegram rates, as follows: one and one-half times the standard night letter rate shall be charged for the transmission of fifty (50) words or less, and one-fifth of the initial rate for such fifty words shall be charged for each additional ten (10) words or less.

To guard against mistakes or delays, the sender of a day letter should order it repeated, that is telegraphed back to the originating office for comparison. For this, one-half the unrepeated day letter rate is charged in addition. Unless otherwise indicated on its face, this is an unrepeated day letter and paid for as such, in consideration whereof it is agreed between the sender of the day letter and this Company as follows:

1. The Company shall not be liable for mistakes or delays in the transmission or delivery, or for non-delivery, of any unrepeated day letter, beyond the amount received for sending the same; nor for mistakes or delays in the transmission or delivery, or for non-delivery, of any repeated day letter, beyond fifty times the sum received for sending the same, unless specially valued; nor in any case for delays arising from unavoidable interruption in the working of its lines; nor for errors in obscure day letters.

2. In any event the Company shall not be liable for damages for any mistakes or delay in the transmission or delivery, or for non-delivery of this day letter, whether caused by the negligence of its servants or otherwise, beyond the sum of Fifty Dollars, at which amount this day letter is hereby valued, unless a greater value is stated in writing hereon at the time the day letter is offered to the Company for transmission, and an additional sum paid or agreed to be paid based on such value equal to one-tenth of one per cent. thereof.

3. The Company is hereby made the agent of the sender, without liability, to forward this day letter over the lines of any other Company when necessary to reach its destination.

4. Day Letters will be delivered free within one-half mile of the Company's office in towns of 5,000 population or less, and within one mile of such office in other cities or towns. Beyond these limits the Company does not undertake to make delivery, but will, without liability, at the sender's request, as his agent and at his expense, endeavor to contract for him for such delivery at a reasonable price.

5. No responsibility attaches to this Company concerning day letters until the same are accepted at one of its transmitting offices, and if a day letter is sent to such office by one of the Company's messengers, he acts for that purpose as the agent of the sender.

6. The Company will not be liable for damages or statutory penalties in any case where the claim is not presented in writing within sixty days after the day letter is filed with the Company for transmission.

In further consideration of the reduced rate for this special "Day Letter" service, the following special terms are hereby agreed to:

A. Day Letters may be forwarded by the Telegraph Company as a deferred service and the transmission and delivery of such Day Letters is, in all respects, subordinate to the priority of transmission and delivery of regular telegrams.

B. Day Letters shall be written in plain English. Code language is not permissible.

C. This Day Letter may be delivered by the Telegraph Company by telephoning the same to the addressee, and such delivery shall be a complete discharge of the obligation of the Telegraph Company to deliver.

D. This Day Letter is received subject to the express understanding and agreement that the Company does not undertake that a Day Letter shall be delivered on the day of its date absolutely and at all events; but that the Company's obligation in this respect is subject to the condition that there shall remain sufficient time for the transmission and delivery of such day letter on the day of its date during regular office hours, subject to the priority of the transmission of regular telegrams under the conditions named above.

No employee of the Company is authorized to vary the foregoing.

THE WESTERN UNION TELEGRAPH COMPANY, INC.
THEO. N. VAIL, *President.*

Classes of Service.

Telegrams.

A full-rate expedited service.

Night Telegrams.

Accepted up to 2.00 a. m. at reduced rates to be sent during the night and delivered not earlier than the morning of the next ensuing business day.

Day Letters.

A deferred day service at rates lower than the standard telegram rates as follows: One and one-half times the standard night letter rate for the transmission of 50 words or less and one-fifth of the initial rate for each additional 10 words or less. Subordinate to the priority of transmission and delivery of regular telegrams. Must be written in plain English. Code language not permissible. Telephonic delivery permissible. Day Letters received subject to express understanding that the Company only undertakes delivery of the same on the day of their date subject to conditions that sufficient time remains for such transmission and delivery during regular office hours, subject to priority of the transmission of regular telegrams.

Night Letters.

Accepted up to midnight for delivery on the morning of the next ensuing business day, at rates still lower than standard night tele-

gram rates, as follows: The standard day rate for 10 words shall be charged for the transmission of 50 words or less, and one-fifth of such standard day rate for 10 words shall be charged for each additional 10 words or less. Must be written in plain English. Code language not permissible. Mail delivery, postage prepaid, permissible.

39 (Copy.)

U. S. Department of Labor,
Immigration Service.

Office of Chinese Inspector in Charge, District of New York and New Jersey, 17 State Street.

NEW YORK, N. Y., January 15, 1914.

In answering refer to File No. 2495/444.

Commissioner of Immigration, San Francisco, Cal.:

Referring to your letter of the 2nd instant, No. 13137½, I return herewith papers in the case of Chin Fong ex S. S. "Persia," December 23, 1913, applying for admission at your port as a merchant and member of the firm of Kwong Mow Lan & Co., No. 8 Pell St., New York City.

In connection with this case, would state that our records show that this applicant filed an application for a return certificate as a merchant and member of the above firm in this office on December 9, 1911, and that the said application was given unfavorable consideration by the Commissioner of Immigration at Seattle, Washington, under date of January 18, 1912, and I have requested the Seattle office to forward to you the original record. In view of the fact, however, that while this application was denied in January, 1912, he did not depart from the United States until November 23, 1912, a further investigation has been made covering this period, and attached to the record will be found in triplicate the sworn statement of Chin Young, the manage- of the firm, together with those of the statutory witnesses, Messrs. Israel Brand and
40 John L. Delmonte, both of whom are business men, and so far as this office knows, reputable.

From the examination of the applicant conducted at your port it is noted that he claims to have been first admitted to the United States in K. S. 32 (1906) at Niagara Falls as a Section 6 Canton merchant, and further, that his certificate was lost at the time the firm of Yung Wah Tong was moving in the fifth or sixth month of S. T. 1 (1909) from No. 32 Mott St. to 33 Pell St. Niagara Falls was not a port of entry for Chinese in K. S. 32 (1906), and consequently he could not have been admitted through that port. Further, the firm of Quong Yuen Shing & Co. has occupied the premises at No. 32 Mott St. for many years last past, as is also the case with the firm of Chong Lung & Co. at No. 33 Pell St.

By reference to the statement of this applicant made before this

office on January 3, 1912, which will form a part of the record to be forwarded to you by the Seattle office, it will be noted that Chin Fung testified he was first admitted to the United States in K. S. 22, 11th month (Dec. 1896—January, 1897) at Niagara Falls, upon a merchant paper which had been forwarded to him by the firm of Young Wah Hong & Co., No. 33 Mott St., and that he continued in business with said firm for a period of about six years, which would be until 1902 or 1903, when the firm went out of existence.

Kwong Mow Lan & Co. are engaged in manufacturing cigars at No. 8 Pell St., where they also dispose of them at retail as well as wholesale, and it is believe- to be a bona-fide establishment.

H. R. SISSON,
Inspector in Charge.

Enc. S./m.

41

(Copy.)

Office Chinese Inspector, N. Y. City.

January 14, 1914.

In the Matter of CHIN FONG, No. 13137½, S. S. "Persia," December 23, 1913, Applying for Admission at San Francisco as a Merchant and Member of the Firm of Kwong Mow Lan & Company, 8 Pell Street, New York City.

F. S. Pierce, Inspector.
Louis Fong, Interpreter.
F. E. Boerner, Stenographer.

Q. What is your name?
A. Chin Young. (Sworn.)
Q. You are manager of the firm of Kwong Mow Lan & Company, 8 Pell Street, this city?
A. Yes.
Q. The business of the firm is that of manufacturing cigars?
A. Yes.
Q. How long have you been manager of that firm?
A. Between nine and ten years.
Q. I show you this photograph and ask if you recognize it? (Referring to photograph in case 2495/444.)
A. Chin Fong.
Q. Where is Chin Fong at the present time?
A. At San Francisco.
Q. Has he been to China recently?
A. Yes, he is returning now.
Q. He is applying for admission to the United States at San Francisco?
A. Yes.
Q. Can you tell when Chin Fong departed for China?
A. Year before last, tenth month.

Inspector's Note.—From the records submitted by the San Francisco office it shows that Chin Fong departed from San Francisco, November 23, 1912.

Q. Did Chin Fong leave New York City on his way to China in the tenth month of 1912?

A. Yes.

Q. Do you recall appearing in this office on January 4, 1912, and being examined by the Inspector in Charge as manager of the firm of Kwong Mow Lan Company, at the time Chin Fong requested a preinvestigation of his status as a merchant?

A. Yes, but I don't remember what I said.

Q. At the time you were examined was Chin Fong a member of the firm of which you were manager?

A. Yes.

Q. How much money had he invested in the firm at that time?

A. $500.

Q. Has Chin Fong retained his membership in the firm of Kwong Mow Lan Company?

42 A. Yes.

Q. Does he still retain $500 interest in the firm?

A. Yes.

Q. During the time intervening between your examination in this office January 4, 1912, and Chin Fong's departure for China in November of that year, what was Chin Fong doing?

A. Working in the store.

Q. Was he engaged in the store as a member of the firm contin-ously during those months?

A. Yes.

Q. During that time he didn't perform manual labor of any kind outside the store?

A. No.

Q. If he is readmitted to the United States do you know what his plans are?

A. He will work at the store again.

Q. Who has taken Chin Fong's place while he has been absent in China?

A. Chin Dor.

Q. If Chin Fong returns to the firm will he take the place of someone of the men who are now active partners in the firm?

A. We have a vacancy for him.

Q. How many active partners are there in the store at the present time, and what are their names?

A. There are two active members of the firm and two who are employed there.

Q. What are the names of the active partners?

A. Chin Dor and myself.

Q. What are the names of those who are employed there?

A. Soo Hoo Jung and Leung Fook.

Q. Is Ching Nguey connected with the firm?

A. He went to China.

Q. When did he leave for China?

A. I think about three or four months ago.

Q. Do you know any white persons who can testify as to Chin Fong's mercantile status during the period intervening between his examination here in January, 1912, and the time he departed for China?

A. The same two who testified for him when he asked to have his case preinvestigated, Mr. Delmonte and Mr. Brand.

Q. What is Mr. Delmonte's business and where is he located?

A. 7 Burling Slip, he sells tobacco.

Q. How long have you known Mr. Delmonte?

A. Seven or eight years.

Q. How often during the twelve months prior to Chin Fong's departure to China did Mr. Delmonte come to the store at 8 Pell Street?

A. About once a week.

Q. Was Chin Fong usually in the store when Mr. Delmonte called?

A. Yes.

Q. Who usually gives Mr. Delmonte orders for tobacco for the firm?

A. When I am in the store I give the orders, but when I am out Chin Fong gave the order.

Q. Who was accustomed to pay the bills for the tobacco bought?

43 A. Sometimes I did, but if I wasn't there Ching Fong paid.

Q. What is Mr. Brand's business and where is it located?

A. He sells cigar boxes. He used to be on Mulberry Street, but he has moved on Centre Street somewhere.

Q. How long have you known Mr. Brand?

A. About seven or eight years.

Q. Between January, 1912 and November, 1912, how often did Mr. Brand come to the store at 8 Pell Street?

A. About once a week. He took the order the first of the week and delivered the boxes the last part of the week.

Q. Did Chin Fong before he departed for China ever give orders to Mr. Brand for cigar boxes?

A. Yes.

Q. Did he ever pay any of the bills for the cigar boxes?

A. Yes.

Q. What is the total capitalization of Kwong Mow Lan Company?

A. It used to be a little over $7,000, but some members have sold their interest back to the firm, it is a little over $6,000.

Q. How much of an interest in the firm have you?

A. $1,000.

Q. How many partners are there?

A. Chin Nguey, Chin Fong, Chin Dor, Chin Look, Moy Fook and myself.

Q. Are those all the members of the firm?

A. Yes.

Q. Has the partnership list changed since you submitted one on the 4th of January, 1912?

A. Yes.

Q. Do you remember how many members were in the firm on the date mentioned, January 4, 1912?

A. Eight.

Q. I show you this signature and ask if it is yours? (Referring to partnership list of the firm in file 2495/444.)

A. Yes.

Q. Do you remember making out this partnership list in January, 1912?

A. Yes.

Q. At that time you mentioned ten persons as being connected with the firm?

A. Maybe so, but I don't remember.

Q. This was copied from the partnership book and it must be right?

A. Yes.

Q. You say now there are only six partners in the firm?

A. Yes.

Q. Can you name the four who have withdrawn from the firm since you submitted this list in January, 1912?

A. Chin On, Chin Tai, Chin Guey and Chin Jin.

Q. You state under oath do you that Chin Fong is still a member of the firm of Kwong Mow Lan Company with an interest therein of $500?

A. Yes.

Q. And that if he is readmitted to the United States he will resume active participation in the business?

A. Yes.

44 Q. Do you know when Chin Fong first came to the United States?

A. No.

Q. How long have you known Chin Fong?

A. Over ten years.

Q. Have you understood all the questions that have been asked you?

A. Yes.

Witness signed stenographic notes.

(Chinese signature.)

(Signed) F. S. PIERCE,
Chinese & Immigrant Inspector.

45 (Copy.)

7 BURLING SLIP, NEW YORK CITY, January 13, 1914.

In the Matter of CHIN FONG, 13137½, ex S. S. "Persia," December 23, 1913, Applying for Admission at San Francisco as a Merchant and Member of the Firm of Kwong Mow Lan & Company, 8 Pell Street, New York City.

F. S. Pierce, Inspector.
F. E. Boerner, Stenographer.

Q. What is your name?
A. Jonh L. Delmonte. (Sworn.)
Q. You are a dealer in leaf tobacco at 7 Burling Slip?
A. In partnership with my father.
Q. I show you this photograph and ask if you recognize it? (Referring to photograph of Chin Fong.)
A. Chin Fong, in the Mow Lan cigar factory, 8 Pell Street.
Q. That is where you have known this man whose photograph I have showed you?
A. Yes.
Q. How long have you known this man?
A. Three or four years, maybe more.
Q. Do you know where this man is now?
A. He left here to go to China. I made an affidavit about six or seven months ago for him.
Q. Do you know when he left the United States for China?
A. About six or seven months ago but he didn't leave right away.
Q. As a matter of fact this man left for China in November, 1912. During the twelve months prior to November, 1912, how often did you visit the store at 8 Pell Street.
A. Twice a week as I do now.
Q. Did you usually see Chin Fong there during those twelve months?
A. Yes.
Q. Did you ever have any business dealings with Chin Fong in which he represented the firm?
A. He has paid me.
Q. Has he ever given you orders?
A. He told me to bring up better samples if he didn't like what I showed him.
Q. Do you know any other members of the firm there?
A. Chin Yung, and one Chin Hee.
Q. Did Chin Fong ever come down here to the store?
A. Yes, with Chin Yung, those two are considered the heads.
Q. Who usually selected the tobacco?
A. Between Chin Yung and this man.
46 Q. Do you know how many times Chin Fong has paid you bills?
A. I can't tell you that.

Q. About what would their bills amount to?
A. A bale of tobacco a month, $140 to $170, about $200 a month.
Q. During the year prior to November, 1912, do you believe Chin Fong performed manual labor of any kind outside the store at 8 Pell Street, such as working in a laundry or restaurant?
A. Not to my knowledge.
Q. Are you satisfied in your own mind that he is a bona fide merchant and member of the firm of Kwong Mow Lan Co.?
A. Yes.

(Signed) F. L. PIERCE,
Chinese & Immigrant Inspector.

47 (Copy.)

207 CENTRE STREET, NEW YORK CITY, January 13, 1914.

In the Matter of CHIN FONG, 13137½, ex S. S. "Persia," December 23, 1913, Applying for Admission at San Francisco as a Merchant and Member of the Firm of Kwong Mow Lan & Company, 8 Pell Street, New York City.

F. S. Pierce, Inspector.
F. E. Boerner, Stenographer.

Q. What is your name?
A. Israel P. Brand. (Sworn.)
Q. What is your occupation?
A. I work for my father, R. Brand, 207 Centre Street, manufacturer of cigar boxes.
Q. Do you recognize that photograph? (Referring to photograph of Chin Fong.)
A. Chin Fong.
Q. How long have you known Chin Fong and where have you known him?
A. About five years at 8 Pell Street, in the firm there, Kwong Mow Lan Company.
Q. What is the nature of that firm's business?
A. Cigar manufacturers.
Q. Do you furnish them with cigar boxes?
A. Yes.
Q. Do you know where this Chin Fong is at the present time?
A. I do not.
Q. When was the last time you saw him?
A. A year and a half ago.
Q. Have you any means of knowing that Chin Fong is a member of the Kwong Mow Lan Company?
A. All the orders were C. O. D. and he paid me.
Q. Did he ever give you orders for boxes?
A. Yes.
Q. As a matter of fact this man departed for China in November,

1912. Can you recall about how frequently you visited the store for the twelve months prior to that time?

A. Every week.

Q. During your visits to the store did you usually see Chin Fong there?

A. Usually he was there.

Q. Do you know any other members of the firm there?

A. C. G. Young is the man I do business with now.

Q. Can you recall how many times Chin Fong paid you money for cigar boxes during the year prior to November, 1912?

A. No.

48 Q. You are positive are you that he gave you orders for boxes?

A. Yes.

Q. Chin Fong in his examination at San Francisco in answer to the question "Did you buy cigar boxes from him, Mr. Brand, personally", said "I paid him for it. I never bought any. He brought the things to the store and I paid the bill for it". In answer to the question "Who bought the goods", Chin Fong replied "Chin Yung".

A. He ordered boxes from me and paid me.

Q. But you can't say how often?

A. No.

Q. Who did most of the ordering, he or this man you call C. G. Young?

A. Sometimes both of them would be there and talk together.

Q. Who of these two Chinamen paid you most frequently for goods delivered?

A. About the same way.

Q. About how large were your bills?

A. About $12.

Q. Do you believe that during the twelve months prior to November, 1912, Chin Fong performed manual labor outside of the store at 8 Pell Street such as working in a laundry or restaurant?

A. Not that I know.

Q. Are you satisfied in your own mind Chin Fong is a bona fide merchant and a member of the firm of Kwong Mow Lan Company?

A. As far as I know.

(Signed) F. S. PIERCE,
Chinese & Immigrant Inspector.

49 (Copy.)

Partnership List of the Firm of Kwong Mow Lan & Co., No. 8 Pell St., New York, N. Y. Filed by Chin Young, Manager, on Jan. 4, 1912. Date of Organization, —. Capitalization, $—. Total Membership, —. Active Members, —.

Name. Chinese.	Name. English.	Date. joined firm	Amount invested.	Date, became active member.	Address.
(Chinese Name)	Chin Jin	KS 29—			
(" ")	Chin Young	9 mo., 1 day.	$500.	.....	10 Pell St.
(" ")	Chin Ng Quong	KS 29—9 mo.	1,000.	.....	Store.
(" ")	Chin Tai	do.	500.	.....	do.
(" ")	Chin Quong	do.	500.	.....	N. Y. City.
(" ")	Chin Look	do.	500.	.....	do.
(" ")	Chin On	do.	1,000.	.....	China.
(" ")	Chin Fong	do.	500.	.....	N. Y. City.
(" ")	Moy Fook	KS 33—8 mo.	500.	.....	Store.
(" ")	Chin Dor	do.	500.	.....	N. Y. City.
		do.	500.	.....	do.

(Chinese signature) (CHIN YOUNG.)

Chin Dor to become active upon departure of Chin Fong.
H. R. S.

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(Copy.)

U. S. Department of Labor,
Immigration Service.

In answering refer to No. —.

Office of the Commissioner, Angel Island Station, via Ferry Post-office, San Francisco, Cal.

13137½.

Jan. 2, 1914.

Chinese Inspector in Charge, Immigration Service, 17 State Street, New York City:

Inclosed please find record in the case of Chin Fong, alleged merchant of New York, who arrived at this port on the SS Persia, December 23, 1913.

Please cause an investigation to be conducted in accordance with the report of Inspector J. H. McCall, and furnish this office with transcript of testimony and report of the examining inspector in triplicate.

(Signed)

——— ———,
Acting Commissioner.

Exact copy as signed by H. Edsell.
Mailed Jan. 2, 1914 By A. H.

C. T.

Inc. 48147.

(Copy.)

U. S. Department of Labor,
Immigration Service.

In answering refer to No. —.

Office of the Commissioner, Angel Island Station, via Ferry Post-office, San Francisco, Cal.

Dec. 29, 1913.

Commissioner of Immigration, Through Chinese Inspector in Charge, Port of San Francisco:

re Chin Fong, Merchant. Vised, New York, No. 13137½, ex SS "Persia", Dec. 23, 1913.

The statement of the applicant has been taken. It will be noted that he claims to be a member of a firm in New York City. The

papers should be forwarded to that place for investigation, as well as a report on the original entry of this person into the United States.

(Signed) J. H. McCALL,
Chinese Inspector.

52 (Copy.)

ANGEL ISLAND, CALIF., Dec. 29, 1913.

#13137/1-2, Chin Fong, Merchant Vis., New York, "Persia," Dec. 23, 1913.

Inspector: J. H. McCall.
Interpreter: Louis Fon.
Stenographer: W. A. Foster.

Applicant Sworn.

(This witness speaks the See Yip dialect. Interpreter Louis Fon speaks the same dialect originally.)

(The applicant was instructed to notify the Inspector if at any time he did not thoroughly understand the Interpreter.)

Q. What are your names?
A. Chin Fong, Chin Ai Chee, no others.
Q. How old are you?
A. Thirty-four.
Q. Where were you born?
A. Hong Mee village, S. N. D.
Q. When did you first come to the United States?
A. K. S. 32, sailed from China in the second month, via SS. "Empress of India," I do not know the date of his arrival at Vancouver; I went to New York by way of Montreal as a Section 6 Canton Merchant, under the name of Chin Fong.
Q. Where did you enter the United States?
A. I was examined at Niagara Falls by Immigration officers.
Q. What was that date?
A. About the 4th month of that year—I don't remember the date.
Q. Where is your section 6 certificate?
A. I kept that paper in the Yung Wah Tong Co., in which firm I have an interest. They were moving in the 5th or 6th month of S. T. 1 and it was lost during the time when they were moving.
Q. From what to what address were they moving?
A. From 32 Mott Street to 33 Pell Street.
Q. Are you married?
A. Yes.
Q. When were you married?
A. Married C. R. 1-12-12.
Q. What is the name, age and feet of your wife?
A. Leung Shee, natural feet, twenty-one, now living in the Hong Mee village in China.
Q. How many children have you?

A. No children.
Q. Is your wife an expectant mother?
A. No.
Q. Immediately after your arrival in the United States K. S. 32-4 what did you do?
A. I joined the Yung Wah Tong Chinese drug store, 32 Mott Street, about the 5th month of that year in the position of salesman and prescription clerk.
Q. What interest did you purchase at that time?
A. $500.
Q. How long did you remain in that firm?
A. A little over three years.
Q. Until when?
A. Until K. S. 36-8.
Q. Was there such a thing as Kwong Suey 36?
A. I don't remember how many years there were in the Kwong Suey reign. I stayed in the firm of Yung Wah Tong about six years.
Q. At what addresses was that store?
A. Three years on the Mott Street number; then they moved to 33 Pell Street for a little over three years and the firm went out of business.
Q. Who was the manager of that firm?
A. Chin Hay Wah.
Q. After the firm went out of business what did you do?
A. Then I was employed at Quong Hai Chung Co., 32 Pell Street, as a salesman and prescription clerk for about three years.
53 Q. Do we understand you to say that you arrived in the United States K. S. 32-5 and were a member of the Yung Wah Tong for six years and employed in the Quong Hai Chung for three years before you departed for China?
A. No: I was a member of that cigar factory for another three years.
Q. What cigar factory?
A. Quong Mow Long Co., No. 8 Pell Street.
Q. When did you join that firm?
A. K. S. 35.
Q. Did you enter that firm in K. S. 35?
A. Yes.
Q. As an active member?
A. No, I merely purchased an interest.
Q. When did you become an active member in that firm?
A. I was an active member of that firm during the three years prior to my departure for China.
Q. From what date?
A. S. T. 2.
Q. How many years of Kwong Suey were there before the reign of Sin Tung?
A. I don't know.
Q. How many years after K. S. 36 was S. T. 2?
A. I don't remember.

Q. Do we understand you to say that you were six years with the Yung Wah Tong, three years with the Quong Hai Chung and an active member of the Quong Mow Long Co. for three years prior to your departure for China? Is that correct?

A. Yes.

Q. That is an impossibility. Seven years only have passed and you have accounted for twelve.

Q. I might have made a mistake about the time I worked for the Quong Hai Chung. I do not know how many years I really worked there.

Q. Should you not remember how long you worked in Quong Hai Chung?

A. I don't remember.

Q. Why don't you remember if you worked there every day?

A. One or two years.

Q. Have you any other explanation to offer?

A. No.

Q. When did you become an active member in Quong Mow Long Co.?

A. S. T. 2-8.

Q. Who was the manager of the firm at that time?

A. Chin Yung.

Q. What is his other name?

A. He had no other name.

Q. What is the capital stock of the firm?

A. $6,000.

Q. How many members?

A. Ten.

Q. How many active members?

A. Three.

Q. Name them with their positions and interests?

A. Chin Yung, manager, $1,000, Chin Ng Guey, he looks after the tobacco, etc., $500, Myself, outside salesman, $500.

Q. What do you mean by outside salesman?

A. I take the cigars out and sell them.

Q. To whom?

A. To different Chinese stores and Chinese restaurants and American stores and wherever orders come in for it, I deliver the orders.

Q. About how many days per month prior to your departure were you outside of the store engaged in business?

A. Most of the time I was in the store. Whenever orders came in I delivered the goods.

Q. How many days per month were you outside?

A. I made about twenty deliveries during the month.

Q. Were you out almost every business day making a delivery?

A. Yes.

Q. What wages did you receive?

A. $35 a month.

Q. Have any dividends been declared since you entered the firm either as a silent or active member?

A. Yes, a little.

Q. When?
A. In S. T. 1 I received $112.
Q. At any other time did you receive money as dividends?
A. Yes, in S. T. 2 I also received $112.
Q. Any other time?
A. $50 in S. T. 3. In the Chinese Republic I have received no dividends.
Q. What articles did you carry in this firm?
A. Nothing but cigars.
Q. What brands?
A. We have no particular brand, but we have one brand called the "Boquet" and stogies and a shorter cigar than the stogies—five-cent cigar.
Q. Don't you know the name of the brand under which you sell them?
A. No name.
Q. How would you do when you went to an American to sell him cigars?
A. I go to Chinese mostly—very little to Americans.
Q. When you did go to Americans how did you proceed to sell them goods if you cannot name the brands you carried?
A. I never sold any to the American stores.
Q. And why have you said that you did?
A. I did not say so.
Q. Do you think our Interpreter would falsify your replies?
A. I meant Chinese stores, not American stores.
Q. Did you ever manufacture a cigar?
A. I never made any cigars by hand but I did handle the machine put the cigar in the mold; also I selected tobacco leaves.
Q. In putting the cigars into the mold don't you perform a certain part of the manufacture of the article?
A. That is only once in a while when it is necessary during the last part of the year when it is busy time.
Q. What do you mean by that?
A. That is before the Chinese holidays we generally get a lot of orders from the Chinese who want cheap cigars and so I help in one two days a month.
Q. How many employees are in this cigar factory?
A. We employed three outsiders besides the three that I have mentioned as members of the firm.
Q. What wages did you pay them?
A. We pay them by the hundred.
Q. How much do you pay them?
A. $1 and $1.25 per hundred.
Q. Describe the building at No. 8 Pell Street?
A. Three-story brick building, upstairs used for rooming. There an alley goes in on the side. The entrance of the store is facing the alley instead of one of the main streets.
Q. Where is the store?
A. On the ground floor. There was a basement downstairs. The

basement was used as a storeroom for the Man Fung restaurant, right opposite our store.

Q. What was to the right of Quong Mow Lung Co.?

A. There was an American saloon.

Q. What is on the other side?

A. Quong Yick Yuen, Chinese drygoods and general merchandise.

Q. What is across the street?

A. Man Fong Chop Suey restaurant is upstairs; downstairs is an American saloon.

Q. Name the streets in Chinatown of New York?

A. Pell, Mott, Dwyer and Boyer, which had only a few Chinese stores. That's all.

Q. What is the name of the largest Chinese store?

A. Quong Yuen Sing Co. is the largest Chinese merchandise company on Mott Street, I don't know the number.

Q. Who was the supervising Chinese of Chinatown, New York?

A. Lee Hee Ling and another man by the name of Chin Kue are the most prominent Chinamen.

Q. Is there a representative of the Chinese government located at New York?

A. Yes, there is a Chinese consul there but I do not know his name.

Q. Where is the consul's residence?

A. Near the waterfront, I do not know what street.

Q. Who will be the white witnesses?

A. Mr. "Brandt," manufacturer of cigars and "John Delamond." That's all.

55 Q. How long have you known Mr. Brandt?

A. Both of these men knew me three years since I was an active member of this cigar factory.

Q. What is the business of Mr. Brandt?

A. He deals in cigar boxes.

Q. Where is his office?

A. 204 Center Street.

Q. During the twelve months prior to your departure how often did you visit his place of business?

A. I did not go to his place of business but he comes to our store once a week.

Q. Did you buy cigar boxes from him personally?

A. I paid him for it. I never bought any. He b-ought the things to the store and I paid the bill for it.

Q. Who bought the goods?

A. Chin Yung.

Q. During the twelve months previous to your departure how much money did you pay him for goods purchased?

A. I paid him three times during Chin Yung's absence in the hospital.

Q. How much?

A. Between $10 and $20 each time.

Q. How long was Chin Yung in the hospital?

A. A little over a month.
Q. What month?
A. C. R. 1-10.
Q. What was the address of the business of Mr. John Delamond?
A. He deals in tobacco leaf, #7 "Belling" Street.
Q. How often for the twelve months prior to your departure did you call at his place of business?
A. I went there once.
Q. When was that?
A. Two or three days prior to my departure for China I went there to bid him goodbye.
Q. For the twelve months prior to that time how often did he call at the store of Quong Mow Lung?
A. About once a week.
Q. Who selected the tobacco?
A. Chin Yung.
Q. Did you ever do so?
A. No.
Q. Did you ever pay him any money?
A. Only once.
Q. How much?
A. $60.
Q. If it is not possible to find these two men in New York City at the present time is there any other person that you know?
A. No.
Q. Have you anything further to state?
A. No.
Q. Have you understood the interpreter? (Through Interpreter Ed Park.)
A. Yes.

(Signed in Chinese characters.)

(Chinese signature.)

J. H. M./W. A. F. 1/2/14.
1886/34.

56 (Copy.)

Wharf book shows Chin Fong, age 33. Kwong Mow Lan Co., 8 Pell St., N. Y. No duplicates (one paper).

57 (Copy.)

Department of Commerce and Labor,
Bureau of Immigration.

(Photo.)

In the Matter of Application of CHIN FONG, Returning Merchant for Admission into the United States.

(Endorsed:) Departed from San Francisco per steamer Nile Nov. 23, 1912. (Signed) W. D. Heitmann, Inspector. (Signed) W. D. Heitmann, Inspector. 11/23/12.

STATE OF NEW YORK,
City and County of New York, ss:

Chin Fong, being duly sworn, deposes and says; that he is a Chinese merchant, a bona fide member of the firm of Kwong Mow Lan Co., manufacturers, of cigars doing business at No. 8 Pell St., in the Borough of Manhattan, City of New York, having therein an interest of Five hundred ($500.00) dollars; that he has been a member of said firm for a period of more than five years last past, during which time he has performed no manual labor other than which was necessary for the transaction of business in connection with said firm; that he now desires to make a visit to China for both pleasure and business, with intention to return to the United States after completing the visit aforesaid.

For the purpose of aiding his re-entering the United States, deponent gives the description of himself as follows: Age 33 years; height 5 feet 3½ inches; Physical Marks: a scar over right eye, one on front of right ear, one on right corner and two on left corner of mouth, one under left jaw and one on each side of face. And for his better identification, deponent attached hereto a true photograph of himself.

(Signature in Chinese.)
(CHIN FONG.)

Subscribed and sworn to before me this 10th day of September, 1912.

(Signed) WALTER EUGENE BIRD,
Notary Public, 87, *N. Y. Co.*

58 (Copy.)

STATE OF NEW YORK,
City and County of New York, ss:

The undersigned, being duly, individually and severally sworn, depose and say; that they are persons other than Chinese; that they are personally acquainted with Chin Fong who executed the preced-

ing affidavit; that they know said Chin Fong is a member of the firm of Kwong Mow Lan Co., engaging in manufacturing Cigars at No. 8 Pell St., in the Borough of Manhattan, City of New York for five years last past, during which time, to the best of deponent's knowledge and belief the said Chin Fong has not been engaged in the performance of any manual labor other than that which was necessary for the conduct of his business in said firm; that they recognize the photograph attached to his affidavit to be the true likeness of said Chin Fong.

(Signed) ISRAEL B. BRAND,
207 Centre St.

(Signed) JOHN DELMONTE,
#7 Burling Slip, N. Y. City.

Subscribed and sworn to before me this 10th day of Sept. 1912.

[SEAL.] WALTER EUGENE BIRD,
Notary Public, 87, *N. Y. Co.*

59 (Copy.)

Miss G. M. Chamberlin, Room 303, 261 Broadway, New York.

[Endorsed:] (Copy.) Department of Commerce and Labor, Bureau of Immigration. Application of Chin Fong, Merchant and Member of the firm of Kwong Mow Lan Company, No. 8 Pell St., New York City, for returning to the United States.

60 (Copy.)

Form 2530.

No. 13137½.

(Name.)	(Steamer.)	(Date.)
Chin Fong	Persia	Dec. 23, 1913.

Cases Used in Connection With Above Case.

No.	Name.	Steamer.	Date.	Relationship.
Seattle	.....	.....	....	.....
28913	Chin Fong	Form 431 (denied)	....	self
New York	.....	.....	....	.....
2495/444	.....	.....	....	.....
.....	.....	.....	....	.....
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61 [Endorsed:] (Copy.) U. S. Department of Labor. Immigration Service. B. Immigration file No. 13137½. Subject: Chin Fong. Mer. Vsd. New York. Exhibit "A." No. 13137½.

62 Service of the within Amended Petition for a Writ of Habeas Corpus, by receipt of a copy thereof, is hereby admitted this 6th day of May, 1914.

JNO. W. PRESTON,
United States Attorney.

(Endorsed:) Filed May 6, 1914. W. B. Maling, Clerk, By C. W. Calbreath, Deputy Clerk.

63 In the District Court of the United States in and for the Northern District of California, First Division.

No. 15614.

In the Matter of CHIN FONG on Habeas Corpus.

Order to Show Cause.

Good cause appearing therefor and upon reading the verified petition on file herein, it is hereby ordered that Samuel W. Backus, Commissioner of Immigration for the Port of San Francisco, District of San Francisco, appear before this Court on the 9 day of May, 1914, at the hour of 10 O'clock A. M. of said day, to show cause, if any he has, why a writ of habeas corpus should not be issued herein as prayed for, and that a copy of this order, with said petition, be served upon the said Commissioner.

And it is further ordered that the said Samuel W. Backus, Commissioner of Immigration as aforesaid, or whoever, acting under the orders of said Commissioner or the Secretary of Labor shall have the custody of the said Chin Fong, are hereby ordered and directed to retain the said Chin Fong within the custody of the said Commissioner of Immigration and within the jurisdiction of this Court until its further order herein.

Dated, San Francisco, May 6, A. D., 1914.

M. T. DOOLING,
United States District Judge.

(Endorsed:) Filed May 6, 1914. W. B. Maling, Clerk, by C. W. Calbreath, Deputy Clerk.

64 In the District Court of the United States in and for the Northern District of California, First Division.

No. 15614.

In the Matter of CHIN FONG on Habeas Corpus.

Demurrer to Amended Petition for Writ of Habeas Corpus.

Now comes the respondent, Samuel W. Backus, Commissioner of Immigration at the port of San Francisco, and demurs to the amended petition on file herein on the following grounds:

I.

That said amended petition does not state facts sufficient to entitle petitioner to the issuance of a writ of Habeas Corpus or any relief thereon.

II.

That said amended petition is insufficient in that the statements in the amended petition relative to the record of the testimony taken on the hearing for the order of deportation of the applicant, are statements of conclusions of law.

Wherefore, respondent prays that the writ of Habeas Corpus be denied.

JOHN W. PRESTON,
United States Attorney,
WALTER E. HETTMAN,
Assistant U. S. Attorney,
Attorneys for Respondent.

Service of the within demurrer and receipt of a copy thereof is hereby admitted this 13th day of May, 1914.

McGOWAN & WORLEY,
Att'ys for Pet.

(Endorsed:) Filed May 13, 1914. W. B. Maling, Clerk, by C. W. Calbreath, Deputy Clerk.

65 At a stated term of the District Court of the United States for the Northern District of California, First Division, held at the Court Room thereof, in the City and County of San Francisco, on Tuesday, the 2nd day of June, in the year of our Lord one thousand nine hundred and fourteen.

Present: The Honorable M. T. Dooling, District Judge.

No. 15614.

In the Matter of CHIN FONG on Habeas Corpus.

(*Order Sustaining Demurrer to Amended Petition, etc.*)

In this matter the Court this day ordered that the Demurrer to the Amended Petition for a Writ of Habeas Corpus heretofore submitted herein be, and the same is hereby, sustained, and said petition for writ of habeas corpus be, and the same is hereby, denied.

66 In the District Court of the United States in and for the Northern District of California, Division No. 1.

No. 15614.

In the Matter of CHIN FONG on Habeas Corpus.

Notice of Appeal.

To the Clerk of the above-entitled Court and to the Honorable John W. Preston, United States Attorney for the Northern District of California:

You and each of you, will please take notice that Chin Fong, the petitioner above named, does hereby appeal to the Supreme Court of the United States from the order made and entered herein on the 2nd day of June, 1914, sustaining the demurrer and denying the amended petition for a writ of Habeas Corpus filed herein.

Dated at San Francisco, California, June 3rd, 1914.

McGOWAN AND WORLEY,
Attorneys for Petitioner and Appellant.

67 In the District Court of the United States in and for the Northern District of California, Division No. 1.

No. 15614.

In the Matter of CHIN FONG on Habeas Corpus.

Petition for Appeal.

Now comes Chin Fong, the petitioner and Appellant herein, and says:

That on the 2nd day of June, 1914, the above entitled Court made

and entered its order sustaining the demurrer and denying the amended Petition for a writ of Habeas Corpus as prayed for, on file herein, in which said order in the above-entitled cause certain errors were made to the prejudice of this Appellant, all of which will more fully appear from the assignment of errors filed herewith.

Wherefore, this Appellant prays that an appeal may be granted in his behalf to the Supreme Court of the United States for the correction of the errors so complained of, and further, that a transcript of the record, proceedings and papers in the above-entitled cause, as shown by the præcipe, duly authenticated, may be sent and transmitted to the said Supreme Court of the United States.

Dated at San Francisco, California, June 3rd, 1914.

McGOWAN AND WORLEY,
Attorneys for Petitioner and Appellant.

68 In the District Court of the United States in and for the Northern District of California, Division No. 1.

No. 15614.

In the Matter of CHIN FONG on Habeas Corpus.

Assignment of Errors.

Comes now Chin Fong, the petitioner and Appellant herein, by his Attorneys McGowan & Worley, and in connection with his petition for an appeal herein, assigns the following errors which he says occur-ed upon the hearing accorded in the above-entitled cause, and upon which he will rely in his appeal to the Supreme Court of the United States, to-wit:

First. The Court erred in sustaining the demur-er and denying the amended petition for a writ of Habeas Corpus, herein, and in deciding that it had not jurisdiction to inquire into the cause of the detention of the said Chin Fong.

Second. The Court erred in sustaining the demur-er and denying the amended petition for a writ of Habeas Corpus, herein, and in not holding that the averments of the amended petition for a writ of Habeas Corpus were sufficient in law to justify the granting and issuing a writ of Habeas Corpus.

Third. The Court erred in sustaining the demur-er and denying the amended petition for a writ of Habeas Corpus, herein, and in thereby holding that upon the application of a Chinese merchant to re-enter the United States who was *admissable* under the General Immigration Law that the Commissioner of Immigration and the Secretary of Labor could require a greater and different degree of proof than that specified in section 2 of the Act of Congress,
69 May 5, 1892, entitled, "An Act to prohibit the coming of Chinese persons into the United States."

Fourth. That the Court erred, in sustaining the demur-er and denying the amended petition for a writ of Habeas Corpus, herein,

it appearing therefrom that the said Chin Fong, is a Chinese merchant, seeking to re-enter the United States, and that he furnished the evidence and the measure of proof required by the statutes in such cases made and provided, for Chinese merchants seeking re-admission into the United States.

Fifth. That the Court erred, in sustaining the demur-er and denying the amended petition for a writ of Habeas Corpus, herein, it appearing therefrom that the rights guaranteed the said Chin Fong, under the treaty between the United States and China concerning immigration November 17, 1880 *and* had been unduly and unlawfully infringed upon.

Sixth. That the Court erred, in sustaining the demur-er and denying the amended petition for a writ of Habeas Corpus, herein, it appearing therefrom that the Commissioner of Immigration and the Secretary of Labor denying the application of Chin Fong to re-enter the United States was contrary to law.

Seventh. That the Court erred, in sustaining the demur-er and denying the amended petition for a writ of Habeas Corpus, herein, it appearing therefrom that the Commissioner of Immigration and the Secretary of Labor denying the application of Chin Fong to re-enter the United States, was not supported by the evidence and in abuse of their discretion.

Eighth. That the Court erred, in sustaining the demur-er and denying the amended petition for a writ of Habeas Corpus, herein, it appearing therefrom that the Commissioner of Immigration and the Secretary of Labor denying the application of Chin Fong
70 to re-enter the United States, was contrary to the evidence and in abuse of their discretion.

Wherefore, the said Chin Fong prays that the judgment and order of the said United States District Court in and for the Northern District of California, made and entered in the office of the Clerk of said Court on the 2nd day of June, 1914, denying the petition for a writ of Habeas Corpus, as prayed for, be reversed, and that this case be remitted to the said lower Court, with instructions to issue the Writ of Habeas Corpus, as prayed for and discharge the said Chin Fong from custody or grant him a trial upon said writ.

Dated at San Francisco, California, June 3rd day A. D. 1914.

McGOWAN AND WORLEY,
Attorneys for Petitioner and Appellant.

Service of the within Notice of Appeal, Petition for Appeal and Assignment of Errors, is hereby admitted and receipt of a copy of each thereof is hereby acknowledged this 4th day of June 1914.

WALTER E. HETTMAN,
Asst. United States Attorney.

(Endorsed:) Filed Jun. 4 1914. W. B. Maling, Clerk, by Lyle S. Morris, Deputy Clerk.

71 In the District Court of the United States in and for the Northern District of California, Division No. 1.

No. 15614.

In the Matter of CHIN FONG on Habeas Corpus.

Order Allowing Appeal.

On the 4th day of June 1914, came Chin Fong, the petitioner herein, the person on whose behalf the said petition was filed herein, by George A. McGowan, Esq., of Messrs. McGowan & Worley, his Attorneys herein and filed herein and presented to this Court his petition praying for the allowance of an appeal to the Supreme Court of the United States to be prosecuted on his behalf, and praying also that a transcript of the record and papers upon which judgment herein was rendered, duly authenticated, may be sent and transmitted to the Supreme Court of the United States, and that such other and further proceedings may be had in the premises as may seem proper.

On consideration whereof, the Court hereby allows the appeal prayed for and directs that a certified copy of the record, as requested by the praecipe, to be hereafter filed herein, be properly prepared and presented, by the Clerk of this Court, to the Supreme Court of the United States, in the time prescribed by law; and ordered further, that the said Samuel W. Backus, Commissioner of Immigration for the Port of San Francisco, or whoever shall hold said office or exercise the functions thereof shall be and they are hereby restrained from deporting the said Chin Fong out of the United States during the pendency of the appeal herein, and that the said Chin Fong remain within the United States and abide by whatever judgment
72 shall be finally entered herein.

And it further appearing to the Court from the entire record herein and from the reports and examinations of the Immigration Authorities that the said Chin Fong, was a Chinese person applying to re-enter the United States to a Commercial Domicile therein and that he resided in the United States for many years prior to his departure for China, and that he now has and had, long prior to his departure from the United States mercantile interests therein, and that he is not a Chinese laborer. The Court does upon consideration of the motion of Counsel for the Petitioner further order and direct that pending the appeal herein taken and allowed, (and it therefore not being an application for bail in the first instance) the said Chin Fong may, and he is hereby ordered released upon bail upon his giving a bond in the sum of $1,500.00, for his future appearance before this Court and to abide by and render himself in execution of whatever judgment shall finally be entered herein. Said bond to be given before a Commissioner of this Court. The United States Marshal for this District is further ordered to take the said Chin

Fong into his custody for the purpose of effecting his release as herein permitted.

Dated at San Francisco, California, June 4, 1914.

M. T. DOOLING,
United States District Judge.

Service of the within Order and a receipt of a copy thereof is hereby admitted this 4th day of June, 1914.

M. T. DOOLING,
United States District Judge.

(Endorsed:) Filed Jun- 5 1914. W. B. Maling, Clerk, by Lyle S. Morris, Deputy Clerk.

73 Copy.

(*Citation on Appeal.*)

UNITED STATES OF AMERICA, *ss:*

The President of the United States to Saml. W. Backus, Commissioner of Immigration for the Port of San Francisco, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at the City of Washington, in the District of Columbia, within sixty days from the date hereof, pursuant to an order allowing an appeal, of record in the Clerk's Office of the United States District Court for the Northern District of California, Division No. One wherein Chin Fong on Habeas Corpus is appellant, and you are appellee, to show cause, if any there be, why the decree rendered against the said appellant, as in the said order allowing appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Morris T. Dooling, United States District Judge for the Northern District of California, this 7th day of Nov. nunc pro tunc as of Nov. 2, A. D. 1914.

M. T. DOOLING,
United States District Judge.

Service of the within citation and receipt of a copy thereof is hereby admitted.

WALTER E. HETTMAN,
Ass't U. S. Att'y.

(Endorsed:) Filed Nov. 7 1914. W. B. Maling, Clerk, by C. W. Calbreath, Deputy Clerk.

74 In the District Court of the United States in and for the Northern District of California, Division No. 1.

No. 15614.

In the Matter of CHIN FONG on Habeas Corpus.

Order Allowing Appellant to Leave Jurisdiction of Court.

Upon motion of Geo. A. McGowan, Esq., of Mess. McGowan and Worley, the attorneys for the petitioner and appellant herein, and it appearing from the record herein that Chin Fong has been ordered admitted and released on bail during the pendency of the appeal taken herein, and being now at large in pursuance of the said order, and it further appearing from the said record that the said Chin Fong has mercantile interests in the City of New York; it is therefore Ordered and Directed that the said Chin Fong with the consent of his surety may be, and hereby is, permitted to depart from the jurisdiction of this court during the pendency of the said appeal, for the purpose of going to and remaining temporarily in the State of New York, but that he shall return to the jurisdiction of this court, and shall render himself amenable to the final judgment to be entered herein, as may be hereafter ordered. For the better identification and protection of the said Chin Fong, he is permitted to file a photograph of himself with the record in this matter, so that a copy of the same, properly certified, may be procured by him for the purposes herein stated.

Dated at San Francisco, California, July 11th, 1914.

M. T. DOOLING,
Judge of the United States District Court.

(Endorsed:) Filed Jul- 11 1914. W. B. Maling, Clerk, by C. W. Calbreath, Deputy Clerk.

75 In the District Court of the United States in and for the Northern District of California, Division No. 1.

No. 15614.

In the Matter of CHIN FONG on Habeas Corpus.

(Order Extending Time to Docket Case.)

Good cause appearing therefor, and upon motion of George A. McGowan, of counsel for appellant herein, — is hereby ordered that the time within which the above entitled case may be docketed in the Supreme Court of the United States is hereby extended for a period of thirty days from and after the 2nd day of January, 1915.

Dong this 24th day of December, 1914.

M. T. DOOLING,
United States District Judge.

Service of the within order and receipt of a copy thereof os hereby admitted this 24th day of December A. D. 1914.

WALTER E. HETTMAN,
Ass't U. S. Att'y.

(Endorsed:) Filed Dec. 24 1914. W. B. Maling, Clerk, by C. W. Calbreath, Deputy Clerk.

76 In the District Court of the United States in and for the Northern District of California, Division No. 1.

No. 15614.

In the Matter of CHIN FONG on Habeas Corpus.

(*Order Extending Time to Docket Case.*)

Upon motion of George A. McGowan, Esquire, of counsel for the appellant herein, and good cause appearing therefor, it is hereby ordered that the time within which the above-entitled case may be docketed with the Clerk of the Supreme Court of the United States, may be, and the same hereby is enlarged for the period of thirty days from and after the date hereof.

Dated at San Francisco, California, January 22, 1915.

M. T. DOOLING,
U. S. District Judge.

The foregoing order extending time is hereby granted.

WALTER E. HETTMAN,
Ass't U. S. Attorney.

Due service of the within order, and receipt of a copy thereof is hereby admitted this 22nd day of January, 1915.

JNO. W. PRESTON,
U. S. Attorney.

(Endorsed:) Filed Jan. 22, 1915. W. B. Maling, Clerk, by Lyle S. Morris, Deputy Clerk.

77 In the District Court of the United States in and for the Northern District of California, Division No. 1.

No. 15614.

In the Matter of CHIN FONG on Habeas Corpus.

(*Order Extending Time to Docket Case.*)

Upon motion of George A. McGowan, Esquire, of counsel for the appellant herein, and good cause appearing therefor, it is hereby

ordered that the time within which the above-entitled case may be docketed with the Clerk of the Supreme Court of the United States, may be, and the same hereby is enlarged for the period of thirty days from and after the date hereof.

Dated at San Francisco, California, February 19th, 1915.

M. T. DOOLING,
U. S. District Judge.

The foregoing order extending time is hereby consented to.

WALTER E. HETTMAN,
Ass't U. S. Attorney.

(Endorsed:) Filed Feb. 19, 1915. W. B. Maling, clerk, by C. W. Calbreath, Deputy Clerk.

78 In the District Court of the United States in and for the Northern District of California, Division No. 1.

No. 15614.

In the Matter of CHIN FONG on Habeas Corpus.

(*Order Extending Time to Docket Case.*)

Upon motion of George A. McGowan, Esquire, of counsel for the appellant herein, and good cause appearing therefor, it is hereby ordered that the time within which the above-entitled case may be docketed with the Clerk of the Supreme Court of the United States, may be, and the same hereby is enlarged for the period of thirty days from and after the date hereof.

Dated at San Francisco, California, March 20th, 1915.

WM. C. VAN FLEET,
United States District Judge.

The foregoing order extending time is hereby consented to.

WALTER E. HETTMAN,
Ass't United States Attorney.

(Endorsed:) Filed Mar. 20, 1915. W. B. Maling, Clerk, by C. W. Calbreath, Deputy Clerk.

79 In the District Court of the United States in and for the Northern District of California, Division No. 1.

No. 15614.

In the Matter of CHIN FONG on Habeas Corpus.

(*Order Extending Time to Docket Case.*)

Upon motion of George A. McGowan, Esquire, of counsel for the appellant herein, and good cause appearing therefor, it is hereby

ordered that the time within which the above-entitled case may be docketed with the Clerk of the Supreme Court of the United States, may be, and the same hereby is enlarged for the period of thirty days from and after the date hereof.

Dated at San Francisco, California, April 19th, 1915.

M. T. DOOLING,
United States District Judge.

The foregoing order extending time is hereby consented to.

JOHN W. PRESTON,
United States Attorney.

(Endorsed:) Filed Apr. 19, 1915. W. B. Maling, Clerk, by Lyle S. Morris, Deputy Clerk.

80 In the District Court of the United States in and for the Northern District of California, Division No. 1.

No. 15614.

In the Matter of CHIN FONG on Habeas Corpus.

(*Order Extending Time to Docket Case and Associating Attorneys.*)

Upon motion of George A. McGowan, Esquire, of counsel for the appellant herein, and good cause appearing therefor, it is hereby ordered that the time within which the above-entitled case may be docketed with the Clerk of the Supreme Court of the United States, may be, and the same hereby is enlarged for the period of thirty days from and after the date hereof.

And further upon motion of said counsel it is hereby ordered that Messrs. Ralston and Richardson of the Washington Bar be associated as attorneys and counsellors for the appellant herein.

Dated at San Francisco, California, May 19th, 1915.

M. T. DOOLING,
United States District Judge.

The foregoing order extending time and associating attorneys is hereby consented to.

WALTER E. HETTMAN,
Ass't United States Attorney.

Due service of the order extending time and associating attorneys, and receipt of a copy thereof is hereby admitted this 19th day of May, 1915.

WALTER E. HETTMAN,
Ass't U. S. Attorney.

(Endorsed:) Filed May 19, 1915. W. B. Maling, Clerk, by Lyle S. Morris, Deputy Clerk.

81 In the District Court of the United States in and for the Northern District of California, Division No. 1.

In the Matter of CHIN FONG on Habeas Corpus.

(*Order Extending Time to Docket Case, etc.*)

Upon motion of George A. McGowan, Esquire, of counsel for the appellant herein, and good cause appearing therefor, it is hereby ordered that the time within which the above-entitled case may be docketed with the Clerk of the Supreme Court of the United States, may be, and the same hereby is enlarged for the period of thirty days from and after the date hereof.

And further upon motion of said counsel it is hereby ordered that Messrs. Ralston and Richardson of the Washington Bar be associated as attorneys and counsellors for the appellant herein.

Dated at San Francisco, California, June 16th, 1915.

M. T. DOOLING,
United States District Judge.

The foregoing order extending time is hereby consented to.

JOHN W. PRESTON,
United States Attorney.

(Endorsed:) Filed Jun- 16, 1915. W. B. Maling, Clerk, by C. W. Calbreath, Deputy Clerk.

82 In the District Court of the United States in and for the Northern District of California, Division No. 1.

#15614.

In the Matter of CHIN FONG on Habeas Corpus.

(*Order Extending Time to Docket Case, etc.*)

Upon motion of George A. McGowan, Esq., of counsel for the appellant herein, and good cause appearing therefor, it is hereby ordered that the time within which the above entitled case may be docketed with the Clerk of the Supreme Court of the United States, may be, and the same hereby is enlarged for the period of thirty days from and after the date hereof.

And further upon motion of said counsel it is hereby ordered that Messrs. Ralston and Richardson of the Washington bar be associated as attorneys and counsellors for the appellant herein.

Dated at San Francisco, Cal., July 15th, 1915.

WM. H. SAWTELLE,
U. S. District Judge.

The foregoing order extending time is hereby consented to.

JOHN W. PRESTON,
United States Attorney.

Due service of the within order extending time, and receipt of a copy thereof is hereby admitted this 15th day of July, 1915.

JOHN W. PRESTON,
U. S. Attorney.

(Endorsed:) Filed Jul- 15, 1915. W. B. Maling, Clerk, by Lyle S. Morris, Deputy Clerk.

83 In the District Court of the United States in and for the Northern District of California, Division No. 1.

No. 15614.

In the Matter of CHIN FONG on Habeas Corpus.

Order Extending Time to Docket Case and Associating Washington Counsel.

Upon motion of George A. McGowan, Esq., of counsel for the appellant herein, and good cause appearing therefor, it is hereby ordered that the time within which the above entitled case may be docketed with the Clerk of the Supreme Court of the United States, may be, and the same hereby is enlarged for the period of thirty days from and after the date hereof.

And further upon motion of said counsel it is hereby ordered that Messrs. Ralston and Richardson of the Washington bar be associated as attorneys and counsellors for the appellant herein.

Dated at San Francisco, Cal., August 14, 1915.

M. T. DOOLING,
United States District Judge.

The foregoing order extending time is hereby consented to.

JNO. W. PRESTON,
United States Attorney.

(Endorsed:) Filed Aug. 14, 1915. W. B. Maling, Clerk, by Lyle S. Morris, Deputy Clerk.

84 In the District Court of the United States in and for the Northern District of California, Division No. 1.

No. 15614.

In the Matter of CHIN FONG on Habeas Corpus.

Order Extending Time to Docket Case and Associating Washington Counsel.

Upon motion of George A. McGowan, Esq., of counsel for the appellant herein, and good cause appearing therefor, it is hereby ordered that the time within which the above entitled case may be docketed with the Clerk of the Supreme Court of the United States, may be, and the same hereby is enlarged for the period of thirty days from and after the date hereof.

And further upon motion of said counsel it is hereby ordered that Messrs. Ralston and Richardson of the Washington bar be associated as attorneys and counsellors for the appellant herein.

Dated at San Francisco, Cal., September 11th, 1915.

M. T. DOOLING,
United States District Judge.

The foregoing order extending time is hereby consented to.

JOHN W. PRESTON,
United States Attorney.

(Endorsed:) Filed Sep. 11, 1915. W. B. Maling, Clerk, by C. W. Calbreath, Deputy Clerk.

85 *Certificate of Clerk United States District Court to Transcript on Appeal.*

I, Walter B. Maling, Clerk of the District Court of the United States of America for the Northern District of California, do hereby certify the foregoing 84 pages, numbered from 1 to 84 inclusive, to contain a full, true, and correct transcript of certain records and proceedings, in the matter of Chin Fong, On Habeas Corpus, number 15,614, as the same now remain on file and of record in the office of the Clerk of said District Court; said transcript having been prepared pursuant to and in accordance with "Praecipe for Transcript on Appeal," copy of which is embodied in this transcript, and the instructions of Geo. A. McGowan, Esquire, Attorney for Appellant herein.

I further certify that the costs for preparing and certifying the foregoing Transcript on Appeal is the sum of Thirty One Dollars and Eighty Cents ($31.80) and that the same has been paid to me by the Attorney for the Appellant herein.

Annexed hereto is the Original Citation on Appeal issued herein (pages 86 and 87).

In witness whereof, I have hereunto set my hand and affixed the Seal of said District Court this 23 day of September, A. D. 1915.

[Seal U. S. District Court, Northern Dist. of California.]

WALTER B. MALING, *Clerk,*
By C. W. CALBREATH,
Deputy Clerk.

C. M. T.

[United States internal revenue documentary stamp, series of 1914, ten cents, canceled 9/23/15. A. W. C.]

86 (*Citation on Appeal—Original.*)

UNITED STATES OF AMERICA, *ss:*

The President of the United States to Sam'l W. Backus, Commissioner of Immigration for the Port of San Francisco, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at the City of Washington, in the District of Columbia, within sixty days from the date hereof, pursuant to an order allowing an appeal, of record in the Clerk's Office of the United States District Court for the Northern District of California, Division No. One, wherein Chin Fong on Habeas Corpus is appellant, and you are appellee, to show cause, if any there be, why the decree rendered against the said appellant, as in the said order allowing appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Morris T. Dooling, United States District Judge for the Northern District of California, this 7th day of Nov. nunc pro tunc as of Nov. 2, A. D. 1914.

M. T. DOOLING,
United States District Judge.

87 [Endorsed:] No. 15614. Supreme Court of the United States. Chin Fong, on Habeas Corpus, Appellant, vs. Sam'l W. Backus, Commissioner, &c. Citation on Appeal. Filed Nov. 7, 1914. W. B. Maling, Clerk, By C. W. Calbreath, Deputy Clerk.

Service of the within citation and receipt of a copy thereof is hereby admitted.

WALTER E. HETTMAN,
Ass't U. S. Att'y.

Endorsed on cover: File No. 24,947. N. California D. C. U. S. Term No. 664. Chin Fong, appellant, vs. Samuel W. Backus, Commissioner of Immigration for the Port of San Francisco. Filed October 11th, 1915. File No. 24,947.

2

Office Supreme Court, U. S.
FILED
MAR 20 1916
JAMES D. MAHER
CLERK

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1915.

No. 664.

CHIN FONG

vs.

SAMUEL W. BACKUS, COMMISSIONER OF IMMIGRATION.

BRIEF FOR APPELLANT, CHIN FONG.

JACKSON H. RALSTON,
WILLIAM E. RICHARDSON,
Attorneys for Appellant and Petitioner.

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1915.

No. 664.

CHIN FONG

vs.

SAMUEL W. BACKUS, COMMISSIONER OF IMMIGRATION.

BRIEF FOR APPELLANT, CHIN FONG.

Statement of Facts.

The facts in this case appear for the most part in the amended petition for writ of *habeas corpus* (Record, pages 3 to 8), and in substance are as follows:

Chin Fong, a Chinese person engaged in business as a merchant in New York, applied, during the month of November, 1911, to the immigration authorities for a preinvestigation of his status as a Chinese merchant, so that there might be issued to him a returning Chinese merchant certificate, which would insure his immediate landing upon returning to the United States from China, which country he desired to visit. It appeared, and the fact is undisputed, that at that time he

was a member of the firm of Kwong Mow Lan & Company, engaged in mercantile business in New York city, and had been so engaged for more than a year before. In connection with his application he gave the names of two white witnesses, other than Chinese, as to his mercantile status, and an examination was conducted, the evidence of the witnesses taken, the manager of the store examined, the store inspected, and as a result it was found that the applicant was a merchant, and had been so for a year prior to his application, and that the facts were established by two credible white witnesses. The results of this examination being forwarded to the immigration officer at Seattle, through which port he desired to depart for China, the last-mentioned official denied the application, for the reason that, although the applicant was a merchant within the requirements of the law, he had not established to the satisfaction of the immigration officer that he had originally entered the United States in a lawful manner. An appeal was taken from this to the Secretary of Commerce and Labor, who sustained such denial. Then Chin Fong, without a certificate, and about November 23, 1912, departed from the United States. After concluding a temporary stay in China he returned to the United States, arriving here about December 23, 1913, and, after having passed examination as an alien, presented himself to the Commissioner of Immigration at the Port of San Francisco for leave to re-enter as a returning Chinese merchant. The Commissioner determined that he was a member of the firm of Kwong Mow Lan & Company, a mercantile establishment, and that this fact was supported by two credible white witnesses, and that so far as the mercantile status was concerned he met the requirements of the law in all respects. Nevertheless the Commissioner denied his application to re-enter because, in the opinion of the Commissioner, he had not established to his satisfaction that his original entry had been accomplished in a lawful manner, and he held therefore that Chin Fong was illegally in the United States, determining

that he, the Commissioner of Immigration, had the right to pass upon the legality of the original entry in this particular proceeding, as well as to determine the legality of the appellant's residence in the United States prior to the period of one year before his departure.

Notwithstanding the clear findings of the Department of Commerce and Labor and of the Commissioner of Immigration in favor of the mercantile status of Chin Fong for the year preceding his departure from the United States, the Commissioner held that his original entry into the United States in 1897 was illegal, Chin Fong never having satisfactorily accounted for the whereabouts of the papers on which he claimed to have been admitted, and having said that he was admitted through Niagara Falls, when it was not a port of entry, the latter part of his conclusion, however, having been based upon the supposition that Chin Fong may have entered about 1906, when Niagara Falls had ceased to be such a port. An appeal was taken from his decision to the Secretary of Labor, and it was affirmed.

Upon the amended petition for the writ of *habeas corpus*, a demurrer being filed, the application for the writ was denied, and the petitioner remanded. From this judgment an appeal has been taken to this court.

Assignments of Error.

First. The court erred in sustaining the demurrer and denying the amended petition for a writ of *habeas corpus* herein, and in deciding that it had not jurisdiction to inquire into the cause of the detention of the said Chin Fong.

Second. The court erred in sustaining the demurrer and denying the amended petition for a writ of *habeas corpus* herein, and in not holding that the averments of the amended petition for a writ of *habeas corpus* were sufficient in law to justify the granting and issuing a writ of *habeas corpus*.

Third. The court erred in sustaining the demurrer and denying the amended petition for a writ of *habeas corpus* herein, and in thereby holding that upon the application of a Chinese merchant to re-enter the United States who was admissible under the general immigration law, that the Commissioner of Immigration and the Secretary of Labor could require a greater and different degree of proof than that specified in section 2 of the act of Congress, May 5, 1892, entitled "An act to prohibit the coming of Chinese persons into the United States."

Fourth. That the court erred in sustaining the demurrer and denying the amended petition for a writ of *habeas corpus* herein, it appearing therefrom that the said Chin Fong is a Chinese merchant seeking to re-enter the United States, and that he furnished the evidence and the measure of proof required by the statutes in such cases made and provided for Chinese merchants seeking readmission into the United States.

Fifth. That the court erred in sustaining the demurrer and denying the amended petition for a writ of *habeas corpus* herein, it appearing therefrom that the rights guaranteed the said Chin Fong under the treaty between the United States and China concerning immigration, November 17, 1880, had been unduly and unlawfully infringed upon.

Sixth. That the court erred in sustaining the demurrer and denying the amended petition for a writ of *habeas corpus* herein, it appearing therefrom that the Commissioner of Immigration and the Secretary of Labor denying the application of Chin Fong to re-enter the United States was contrary to law.

Seventh. That the court erred in sustaining the demurrer and denying the amended petition for a writ of *habeas corpus*

herein, it appearing therefrom that the Commissioner of Immigration and the Secretary of Labor denying the application of Chin Fong to re-enter the United States was not supported by the evidence and in abuse of their discretion.

Eighth. That the court erred in sustaining the demurrer and denying the amended petition for a writ of *habeas corpus* herein, it appearing therefrom that the Commissioner of Immigration and the Secretary of Labor denying the application of Chin Fong to re-enter the United States was contrary to the evidence and in abuse of their discretion.

ARGUMENT.

We shall not, in this argument, discuss an apparent confusion as to the date of entry into the United States of Chin Fong, whether in 1897 or 1906. To our minds this is an absolutely immaterial feature of the case. It is sufficient, we believe, to point to the fact that for more than one year, and certainly for three years before his departure, Chin Fong had been a member of Kwong Mow Lan & Company, a Chinese mercantile firm of New York (Record, page 39), and he had not been a Chinese laborer, so far as the record shows, at any time after his admission to the United States, being therefore a merchant domiciled within the United States, and his status having been proven by two white witnesses, a fact which was established before his departure, and re-established, if such course were necessary, after his return to the United States, as shown by the admissions of, first, the Department of Commerce and Labor, and, second, the Department of Labor. Chin Fong comes under the direct language of section 2 of the act of November 3, 1892, 28 Stat. at Large, 7, reading as follows:

> "Where an application is made by a Chinaman for entrance into the United States on the ground that he was formerly engaged in this country as a mer-

> chant, he shall show by the testimony of two credible witnesses other than Chinese the fact that he conducted such business as hereinafter defined for at least one year before his departure from the United States, and that during such year he was not engaged in the performance of any manual labor, except such as was necessary in the conduct of his business as such merchant, and in default of such proof shall be refused landing."

The language just quoted was enacted by Congress because of the case of Lau Ow Bew, 144 U. S., 47; 36 Law. Ed., 340. In that case the appellant had been a merchant for seventeen years in Portland, Oregon, and departed in 1890 on a temporary visit to China, with the intention of returning as soon as possible to this country, and he did so return in August, 1891. At the time of his departure he had procured satisfactory evidence of his status in this country as a merchant, and on his return presented his proofs to the collector, but the collector, while admitting that he was a merchant domiciled in the United States, refused to permit him to land because he had failed and neglected to procure the certificate of the Chinese Government to his mercantile capacity under section 6 of the Chinese restriction act of May 6, 1882, as amended by the act of July 5, 1884. The Circuit Court and subsequently the Circuit Court of Appeals ordered his exclusion, but the Supreme Court of the United States reversed their action, directing his admission.

In this case the Supreme Court held that—

> "Chinese merchants domiciled in the United States, and in China only for temporary purposes, *animo revertendi*, do not appear to us to occupy the predicament of persons 'who shall be about to come to the United States,' when they start on their return to the country of their residence and business."

The court further held that by our treaty with China—

> "Chinese merchants domiciled in the United States, have, and are entitled to exercise, the right of free

> egress and ingress, and all other rights, privileges and immunities enjoyed in this country by the citizens or subjects of the 'most favored nation.'"

It was apparently considered by Congress, after this decision, that rules should be laid down applicable to Chinese merchants domiciled in the United States. Hence the language of section 2 of the act of November 3, 1892, above quoted.

In the pending case it is admitted by the demurrer, and remains the undoubted fact, that Chin Fong did establish, as provided by the act, by two credible witnesses other than Chinese, the fact that he conducted a mercantile business for at least one year before his departure, and during said year was not engaged in the performance of any manual labor except such as was necessary in the conduct of his business as merchant. More than this, it does not appear that Chin Fong at any time while living in the United States was anything but a merchant. He did not change his occupation, so far as the record informs us, from a non-exempt to an exempt class.

The principal proposition that we desire to maintain and which has apparently been ignored by the Department of Labor is that when Congress has definitely fixed the tests and qualifications attendant upon the determination of a given act it is not within the power of an administrative officer to add to or subtract from the congressional rule. In such a case as this, an application made by a Chinaman for entrance into the United States on the ground that he was formerly engaged as a merchant in this country, the Chinaman is obligated to show by the testimony of two credible witnesses other than Chinese the fact that he conducted such mercantile business for a year before his departure, and the further fact that during such year he was not engaged in the performance of any manual labor except such as was necessary in the conduct of his business. In default of proof of these two essential things, he was to be refused landing. Con-

gress did not say, as the Bureau seems to have considered, that the merchant was obligated to prove the rightfulness of his original entry. This entry is a fact entirely extraneous to the determination of his mercantile status. He may have originally entered the country as a merchant, as Chin Fong claims in this case, or he may have originally entered as a laborer, or even surreptitiously. The manner of entry was entirely ignored by Congress. The reason for this course on behalf of the legislative branch may well have been that after the lapse of years it might become exceedingly difficult, if not impossible, for a Chinaman to establish the details of his first entry, but whatever the reason may have been the fact remains that Congress in its wisdom did not consider it a fact material to be established.

If the Department of Labor has the right to superadd one qualification deemed by it essential, so may it add another, until the law becomes entirely unrecognizable. Such a course would be in plain derogation of the treaty obligations between the United States and China, allowing to Chinese merchants freedom of egress and ingress in the manner permitted to the most favored nations, the essential fact by law and treaty being merely that of mercantile status.

It will doubtless be argued by the Government that if a man surreptitiously enter the country, being a laborer, he might thereafter change his status to that of a merchant, and so remaining for a year become established here, so that he might not be thereafter removed. This reasoning is erroneous in that the law provides for his arrest and trial, not by the Department of Labor, but before the courts. The act of May 5, 1892, 27 Stat. L., 25, left it to the courts to determine whether any Chinese person could be adjudged to be unlawfully within the United States, and he was required in such proceeding to establish by affirmative proof to the satisfaction of justice, judge or commissioner, as the case might be, his lawful right to remain in the United States, and if found to be unlawfully within the United States he was sub-

ject to imprisonment and removal. This issue therefore was one to be considered, the necessity arising, in the courts, and not one to be passed upon by any departmental officer. By section 3 of the act of March 3, 1901, 31 Stat. L., p. 1093, no warrant of arrest for being unlawfully within the United States was to issue unless it was first approved or requested in writing by the United States District Attorney of the district in which issued. It appears, therefore, clear that in attempting to pass upon this issue the Department of Labor has assumed a judicial function.

It may not be argued that the admission of a recognized Chinese merchant was within the supposed evils contemplated by the exclusion statutes, and that therefore the Department of Labor was justified in its action. The exclusion statutes are entirely against the immigration of Chinese laborers. It does not appear that at any time during the course of his career in this country Chin Fong was a Chinese laborer. At all times he appeared to have been engaged in a mercantile pursuit. Neither the spirit nor the letter of the Chinese exclusion act, therefore, applies to such a case as that of Chin Fong.

It may not be argued that the decision of the Department of Labor as to Chin Fong's right of entry under the circumstances was final, and that therefore the courts have no right to interfere. We admit the finality of the determination of the Department of Labor upon the points it is entitled to determine. The Department was entitled to determine whether Chin Fong had been a merchant within the United States for a year preceding his departure, and whether such fact was established by two credible witnesses other than Chinese, together with the further fact that he had not been engaged in manual labor except as was incidental to his pursuit as a merchant. All of these facts were definitely and finally found in his favor by the Department, and this finding, we may admit, is not subject to challenge. The Department, however, went further and found another fact which it was

not charged with the duty of finding, and upon the strength of its determination in such respect has refused admission. This finding, therefore, has not the element of finality or any legal support whatsoever, and must be, we submit, definitely disregarded in this proceeding, and the detained discharged.

Respectfully submitted,

JACKSON H. RALSTON,
WILLIAM E. RICHARDSON,
Attorneys for Appellant and Petitioner.

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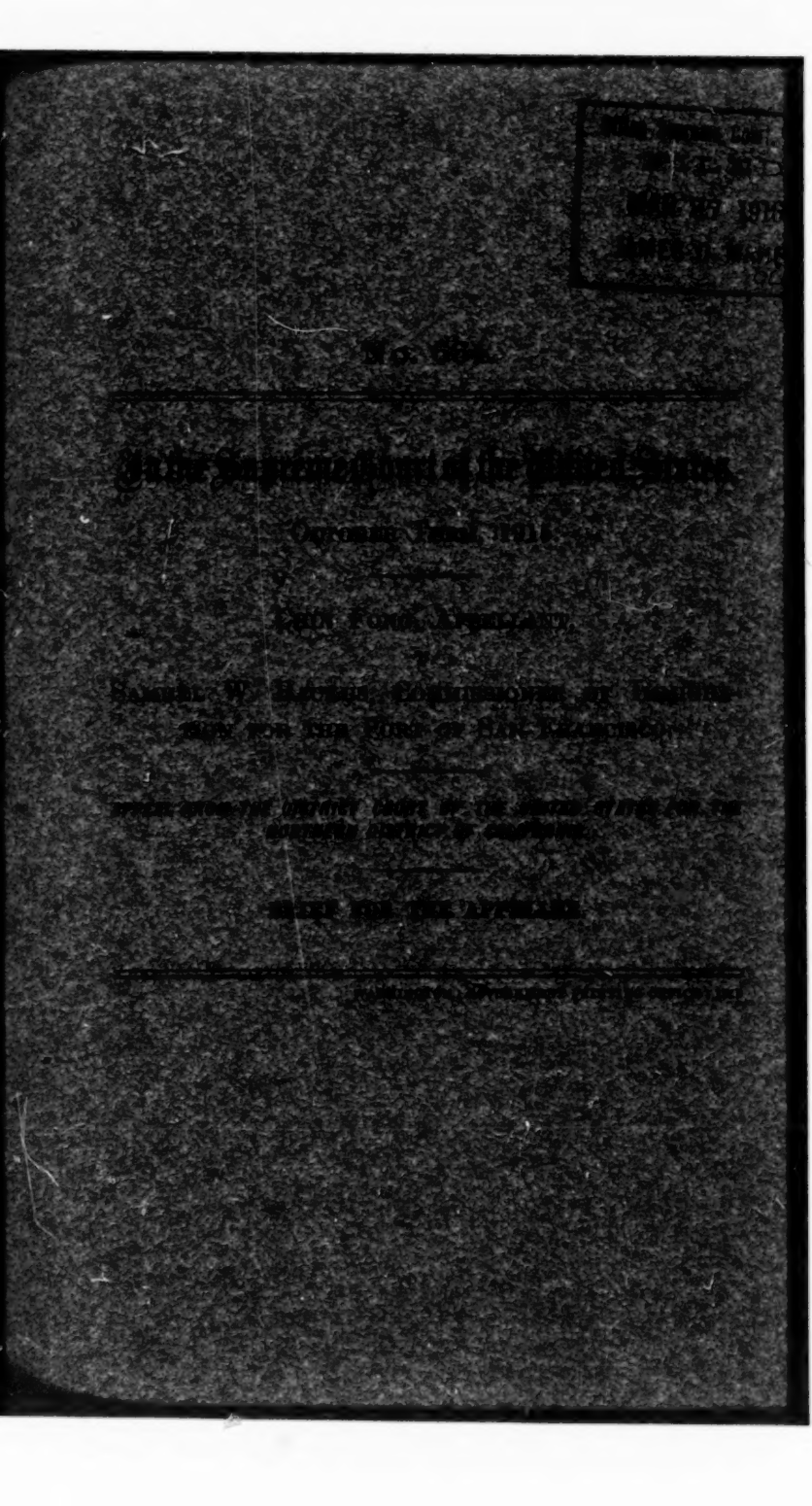

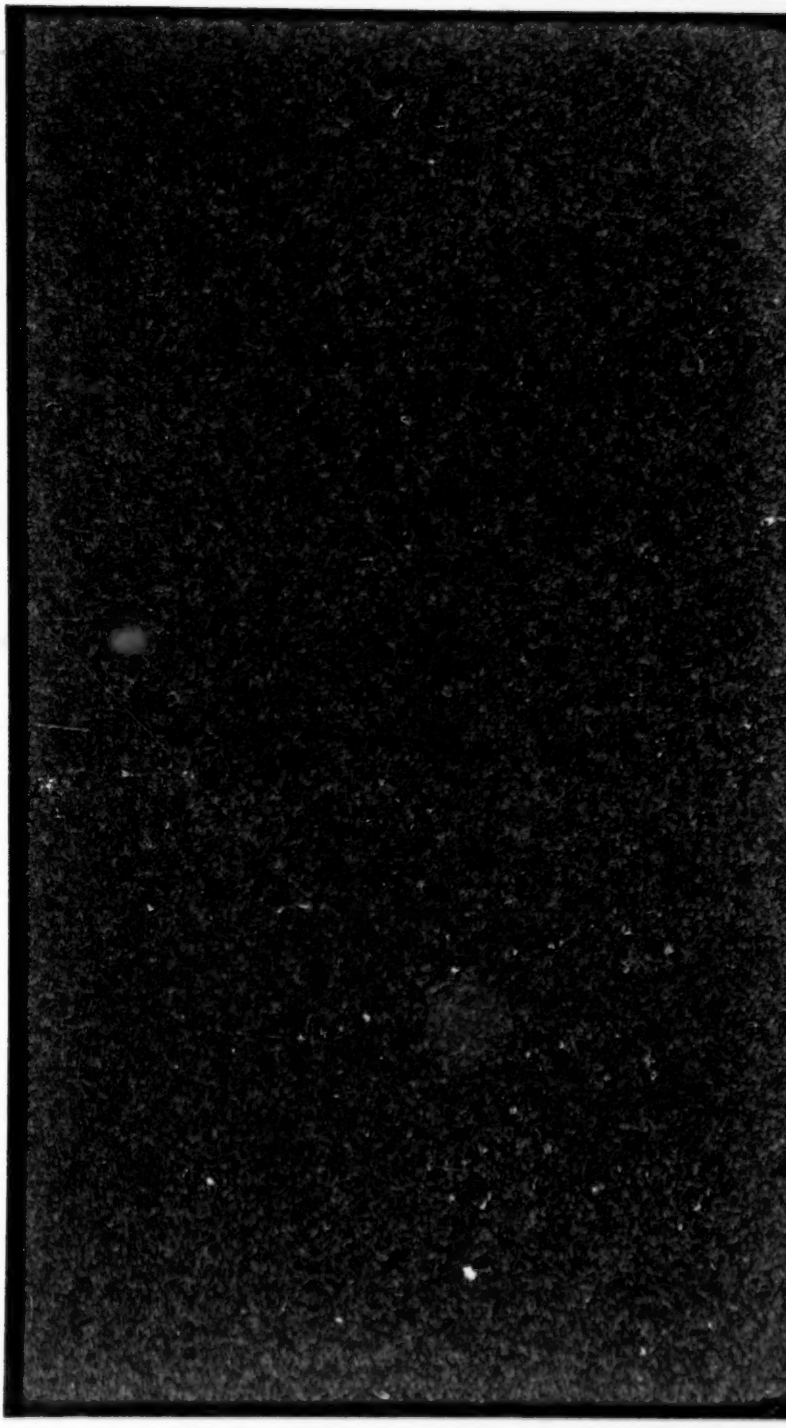

In the Supreme Court of the United States.

OCTOBER TERM, 1915.

CHIN FONG, APPELLANT,
v.
SAMUEL W. BACKUS, COMMISSIONER OF IMMIGRATION FOR THE PORT OF SAN FRANCISCO. | No. 664.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF CALIFORNIA.

BRIEF FOR THE APPELLEE.

I.

The appeal in this case should be dismissed for lack of jurisdiction.

The case is here on appeal from a judgment sustaining a demurrer to a petition for a writ of habeas corpus. As demonstrating that the appeal should be dismissed for want of jurisdiction, because no substantial constitutional or treaty question is involved, attention is invited to the following facts disclosed by the record:

On December 9, 1911, appellant applied for a departmental certificate authorizing him to depart from and thereafter return to the country as a pre-

viously domiciled merchant. The Commissioner of Immigration at Seattle, Wash., refused the certificate on the ground that the evidence made it clear that appellant had originally entered the country surreptitiously at Niagara Falls, N. Y., in 1906. Appellant appealed to the Secretary of Labor, who affirmed the decision of the Commissioner. Notwithstanding this action, appellant departed from the country in November, 1912; and, upon his return in December, 1913, applied for admission upon the ground that he had been formerly engaged as a merchant in this country for at least one year previous to his departure. Pursuant to the requirements of section 2 of the act of November 3, 1893, 28 Stat. 7, he submitted the testimony of two credible witnesses, other than Chinese, to establish his previous merchant status. He was also examined by the immigration officer, who, upon the whole record, made the following finding:

> The applicant applied for preinvestigation of his alleged status as a merchant (Form 431) in December, 1911, but his application was denied by the Seattle office, and an appeal from that decision dismissed by the Bureau for the reason that it was satisfactorily shown at that time that the applicant had fraudulently secured his original admission to the United States, it having been claimed by him that he entered this country at or near Niagara Falls, New York, in 1897 on "merchant's papers" sent to him in China by the Young Wah Hong Company at New York. It was

first claimed by the applicant, in the present case, that he was admitted at Niagara Falls in 1906, but when confronted with his previous testimony he denied the last-mentioned statement and reiterated the year first-mentioned as the date of his original entry, and stated that he was then admitted as a section six Canton merchant on papers secured by him in that city.

Niagara Falls was not a port of entry for Chinese in 1906, and the applicant has not satisfactorily accounted for the present whereabouts of the papers on which he claims to have been admitted, so that it must be concluded that his domicile in this country was unlawful; and as the Bureau has sustained the action of the Seattle office in refusing his application for Form 431, the applicant is denied admission and advised of his right of appeal.

Dated this 6th day of February, 1914.

(Signed) SAMUEL W. BACKUS,
Commissioner.

Appellant thereupon appealed to the Secretary of Labor, who affirmed the excluding decision. (R. 17 *et seq.*) Dissatisfied with this action, he petitioned for a writ of habeas corpus, a demurrer to which was sustained by the court in the following opinion (R. 2):

> The petition shows that petitioner Chin Fong, who had been a resident of the United States for a number of years, departed for China in November 1912; that before he left he applied for a preinvestigation as to his status as a merchant, and a certificate was denied him on the ground that his original entry into this

country was surreptitious. Notwithstanding this denial the petitioner left the country, and is now endeavoring to re-enter as a returning Chinese merchant; that he presents the affidavits of a member of the New York firm to which he claims to belong and of two reputable Americans supporting his claim; that notwithstanding these facts he has been denied admission and ordered deported on the same ground that his pre-investigation certificate was denied, that is to say, because his original entry was surreptitious; that in so deciding the immigration department has exceeded its authority, as that question can only be determined under the Exclusion laws by a Justice, Judge or Commissioner. This briefly stated is the body of the present petition for a writ of habeas corpus. To this petition a demurrer has been interposed. I am of the opinion that the demurrer must be sustained. Had the petitioner been content to remain in this country he could have been deported only after a hearing before a Justice, Judge or Commissioner. But as he left the country voluntarily, and even after a pre-investigation certificate was denied him, the question of his right to reentry lies peculiarly with the immigration department, and as they have found that he is not entitled to re-enter such finding cannot be disturbed. A different rule prevails, and a different tribunal determines in the case of a Chinese applying to enter from that of one already in this country whom it is sought to deport, under the Exclusion laws.

The demurrer will, therefore, be sustained and the application for a writ denied.

Appellant thereupon filed an "amended petition for writ of habeas corpus," a demurrer to which was also sustained, but without opinion. (R. 3, 48.) Only the amended petition is made a part of the record. It does not purport to involve the construction or application of the Constitution of the United States, but has apparently been framed so as to support the jurisdiction of this court under that portion of section 238 of the Judicial Code which permits an appeal in any case "in which * * * the validity or construction of any treaty made under its [United States] authority is drawn in question." In one part of this petition appellant asserts that the action of the immigration officers is in violation of his treaty rights, and in another place he asserts that the treaty with China of November 17, 1880, 22 Stat. 826, gives him the right to make a temporary visit to China as a merchant. A more careful scrutiny of this petition, however, discloses that he was claiming the right to reenter as a merchant *solely pursuant to* various provisions of *the Chinese exclusion acts* specifying the terms upon which such an alien may enter, and that the attempt to inject a treaty question was but a makeweight for review in this court, after relief under the original petition had been denied.

This court has emphatically announced that the bare assertion of a constitutional or treaty right is not sufficient to give it jurisdiction on appeal, but that the Constitution or treaty must be "really and substantially" involved.

The present appeal appears to fall directly within the ruling of this court in *Sloan* v. *United States*, 193 U. S. 614, 620, in which it was said:

> * * * The construction of a treaty is used only as an argument upon the issue directly in question, viz., the construction of the statute. The alleged right to an allotment being based upon the act of 1882, and the defence being also based upon the proper construction of that act, we cannot but regard the case as one simply resting on such act. The construction of these various treaties was not substantially or in any other than a merely incidental or remote manner drawn in question, and therefore a direct appeal to this court cannot be sustained.
>
> We think the appeals come within the principle of *Muse* v. *Arlington Hotel Company*, 168 U. S. 430; *Western Union Telegraph Company* v. *Ann Arbor Railway Company*, 178 U. S. 239, and *Lampassas* v. *Bell*, 180 U. S. 276, which hold that where the suit does not really and substantially involve a dispute or controversy as to the effect or construction of the Constitution or laws of the United States, upon the determination of which the result depends, it is not a suit under the Constitution or laws, and that jurisdiction cannot under such circumstances be maintained of a direct appeal to this court from the Circuit Court.
>
> In *Muse* v. *Arlington Hotel Company*, it was held that some right, title, privilege or immunity dependent upon a treaty must be so set up or claimed *as to require the Circuit Court to pass upon the question of the validity or con-*

> *struction of the treaty in disposing of the right asserted.* In order to come within the act of 1891 the treaty must be directly involved, and upon its construction the rights of the parties must rest. Within these cases it cannot be said that the construction of any treaty is drawn in question herein when the rights of neither party are necessarily dependent upon such construction, but are dependent upon that which may be given the statute of 1882, and when the construction of that statute is independent of that which may be given any of the treaties mentioned, *although weight may be given to the treaties in determining the question of the construction of the statute.* See also *Starin* v. *New York*, 115 U. S. 248.

In accord are *Lau Ow Bew* v. *United States*, 144 U. S. 47, 58, and 141 U. S. 583, 587; *Low Wah Suey* v. *Backus*, 225 U. S. 460, 468; *Brolan* v. *United States*, 236 U. S. 216, 218; *Lamar* v. *United States*, 240 U. S. 60; *Norton* v. *Whiteside*, 239 U. S. 144.

So in the case at bar the claimed treaty right is likewise frivolous, for the right of appellant to enter is determinable solely by the various applicable provisions of the Chinese exclusion laws, which are as follows:

Act of May 6, 1882, 22 Stat. 58, as amended by the act of July 5, 1884, 23 Stat. 115:

> SEC. 6. That in order to the faithful execution of the provisions of this act, every Chinese person, other than a laborer, who may be entitled by said treaty or this act to come within the United States, and who shall be about to

come to the United States, shall obtain the permission of and be identified as so entitled by the Chinese Government, or of such other foreign government of which at the time such Chinese person shall be a subject, in each case to be evidenced by a certificate issued by such Government, which certificate shall be in the English language, and shall show such permission, with the name of the permitted person in his or her proper signature, and which certificate shall state the individual, family, and tribal name in full, title or official rank, if any, the age, height, and all physical peculiarities, former and present occupation or profession, when and where and how long pursued, and place of residence of the person to whom the certificate is issued, and that such person is entitled by this act to come within the United States.

If the person so applying for a certificate shall be a merchant, said certificate shall, in addition to above requirements, state the nature, character, and estimated value of the business carried on by him prior to and at the time of his application as aforesaid: *Provided*, That nothing in this act nor in said treaty shall be construed as embracing within the meaning of the word "merchant," hucksters, peddlers, or those engaged in taking, drying, or otherwise preserving shell or other fish for home consumption or exportation. * * *

Such certificate viseed as aforesaid shall be prima facie evidence of the facts set forth therein, and shall be produced to the collector of customs of the port in the district

in the United States at which the person named therein shall arrive, and afterward produced to the proper authorities of the United States whenever lawfully demanded, and shall be the sole evidence permissible on the part of the person so producing the same to establish a right of entry into the United States; but said certificate may be controverted and the facts therein stated disapproved by the United States authorities.

Act of May 5, 1892, 27 Stat. 25:

SEC. 3. That any Chinese person or person of Chinese descent arrested under the provisions of this act or the acts hereby extended shall be adjudged to be unlawfully within the United States unless such person shall establish, by affirmative proof to the satisfaction of such justice, judge, or commissioner, his lawful right to remain in the United States.

Act of November 3, 1893, 28 Stat. 7:

SEC. 2. * * * * *

The term "merchant," as employed herein and in the acts of which this is amendatory, shall have the following meaning and none other: A merchant is a person engaged in buying and selling merchandise, at a fixed place of business, which business is conducted in his name, and who during the time he claims to be engaged as a merchant, does not engage in the performance of any manual labor, except such as is necessary in the conduct of his business as such merchant.

Where an application is made by a Chinaman for entrance into the United States on

> the ground that he was formerly engaged in this country as a merchant, he shall establish by the testimony of two credible witnesses other than Chinese the fact that he conducted such business as hereinbefore defined for at least one year before his departure from the United States, and that during such year he was not engaged in the performance of any manual labor, except such as was necessary in the conduct of his business as such merchant, and in default of such proof shall be refused landing.

In no fair sense is the "validity or construction" of a treaty or any constitutional question involved in the case of a Chinaman who gains *unlawful* entrance to the country, engages in a mercantile pursuit, departs thereafter for China, and upon his return is denied admission because he never had a previous lawful domicile here. This appeal should therefore be dismissed.

II.

Even though the jurisdiction of this court be sustained, the judgment nevertheless should be affirmed.

Conceding, *arguendo*, that this court has jurisdiction, there is absolutely no showing "that the proceedings were *manifestly* unfair, that the action of the executive officers was such as to prevent a fair investigation or that there was a *manifest* abuse of the discretion committed to them by the statute." *Low Wah Suey* v. *Backus*, 225 U. S. 460, 468. That

being so, their excluding decision was made final by the statute.

The whole contention of appellant, when carefully analyzed, rests upon the false assumption that the provisions of section 2 of the Chinese exclusion act of November 8, 1893, *supra*, were intended to compel the immigration officers to admit any returning Chinaman who was able to furnish the testimony of two credible witnesses other than Chinese, that he had been engaged here as a merchant for a period of at least one year previous to his departure.

Section 2 does not purport to confer any right of entry, but merely to declare what evidence shall be required in the case of a former Chinese merchant claiming the right to reenter. It still remains for the immigration officers to determine the lawfulness of the original entry upon which the domicile claimed to give the right to depart and reenter is based. The Chinaman having established that he had originally entered the country lawfully as a merchant, then section 2 takes hold and declares what character of evidence he shall submit to show his merchant status for the year previous to his departure.

Section 6 of the act of 1882 as amended in 1884, *supra*, declares that the certificates there provided for "shall be the sole evidence permissible on the part of the person so producing the same to establish a right of entry into the United States," and that the facts set forth in such certificate may be controverted by the immigration officers, which may be done after as well as at the time of entry. *Li Sing* v.

United States, 180 U. S. 486; *Pearson* v. *Williams*, 202 U. S. 281; *Lewis* v. *Frick*, 233 U. S. 291. If one with a certificate is subject at any time to have it controverted and thereby lose his right to reenter or to remain if admitted, certainly one, like appellant, without a certificate, entering the country clandestinely as this record discloses, can claim no higher right to reenter or to remain if admitted. Appellant was subject to deportation at the time he voluntarily departed from the country, and would be not less subject to deportation if he should now gain admission.

There is no escape from the controlling effect of *Lem Moon Sing* v. *United States*, 158 U. S. 538. There appellant applied for admission as a returning merchant. He submitted "the testimony of two credible witnesses other than Chinese, showing that he conducted business as a merchant here for one year previous to his departure." His application to reenter was denied, and he thereupon sought relief through *habeas corpus* proceedings. The writ was denied, and he appealed directly to this court, which, without determining whether he was "entitled, of right, under some law or treaty, to reenter the United States," held that the action of the immigration officers was made final by the statute, and therefore affirmed the judgment below.

The above case also disposes of appellant's contention that had he remained in this country he could only have been deported as a result of proceedings before a United States commissioner or judge as

provided for in the Chinese exclusion laws. See also *United States* v. *Wong You*, 223 U. S. 67. He having, however, voluntarily left the country, the executive officers constitute the sole tribunal established by the law to pass finally upon his right to reenter. Having failed to show a right to remain if admitted, obviously he is in no position to compel admission. The right to remain can not, as appellant appears to argue, spring from an illegal entry. The Chinese exclusion laws are emphatic in declaring the conditions under which Chinamen may enter, and in providing for the deportation of those who enter otherwise.

This court will not, of course, undertake to weigh the evidence upon which the immigration officers acted. *Chin Yow* v. *United States*, 208 U. S. 8.

III.

It is respectfully submitted that the appeal should be dismissed or the judgment below affirmed.

WILLIAM WALLACE, Jr.,
Assistant Attorney General.

MARCH, 1916.

○

In the Supreme Court of the United States

OCTOBER TERM, 1913

CHIN FONG, APPELLANT, v. SAMUEL W. BACKUS, COMMISSIONER OF IMMIGRATION FOR THE PORT OF SAN FRANCISCO.	No. 604

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF CALIFORNIA

SUPPLEMENTAL BRIEF FOR THE APPELLEE

STATEMENT

The Government submits the following supplemental brief:

Appellant in his brief repeatedly asserts (1) that the Seattle inspectors and San Francisco commissioner each found he met the law's requirement as a domiciled merchant; (2) that the record shows that the department conceded he had (brief, pp. 3, 5, 8, 9, 10); and (3) that the demurrer conceded it because it was averred in the petition.

(1) The demurrer concedes nothing beyond the immigration record, because the petition avers (R., 3)

that the immigration record attached is a "complete copy," and all averments of the petition are but conclusions therefrom. While Chin Fong *claimed* (R., 21, 22, 23, 28) he had been advised by letter that he was an acknowledged merchant, the claim was opposed by the immigration record.

The report of Sissons, New York inspector (R. 28) and the report of McCall (R. 20) merely furnish information. The only *finding* in the record is that of the San Francisco officer (R. 18). Both reports and the findings show that the action taken in each instance was on the ground that the original entry was fraudulent.

So that the immigration officials never reached the question of sufficiency or the proof of merchant status. They simply held the original fraudulent entry precluded gaining a lawful domiciliary merchant status. The effort to give appellant a confessed or adjudicated domiciliary merchant status wholly fails. It the case were to go back that question would still be open to inquiry.

The infirmity of appellant's whole argument lies in assuming he could gain that status though his original entry was unlawful (brief, p. 8, top); and that the Government conceded he had that status. The Government argues he never could have it, and therefore never did have it.

No point is made that the finding of original fraudulent entry is not abundantly supported in the record.

ARGUMENT.

The Government insists (1) that this Court has no jurisdiction in direct review; (2) that the fairness of the hearing not being challenged, the decision of the immigration officers is final; and (3) that a Chinaman whose original entry was unlawful is not within the benefit of the act of 1893, 28 Stat. 7.

I.

This court has no jurisdiction in direct review.

This point is fully treated in the Government's original brief, pages 1 to 10. We but add:

Section 238, Judicial Code, as amended by the act of January 28, 1915, 38 Stat. 803, 804, authorizes a direct appeal—

> * * * in any case that involves the construction or application of the Constitution of the United States; in any case in which the * * * construction of any treaty * * * is drawn in question.

Before the passage of the act of 1893, *supra*, Chinese "proceeding to the United States * * * as merchants" were "allowed to *go and come*" (Art. II, treaty of 1880, 22 Stat. 826) without other restriction than the requirement of a visèd certificate (sec. 6, act of 1882, 22 Stat. 58, as amended by act of 1884, 23 Stat. 115); while Chinese laborers leaving the United States were permitted to return, if at departure they had in the United States either wife, child, or parent, or property of the value of $1,000, or debts of like

amount due them and pending settlement. No other return privileges were accorded.

The finding being that Chin Fong at the time of his first entry was proceeding to the United States, not as a merchant, but in order to enter fraudulently, plainly he could not have the benefit of the treaty. He made no claim of privilege to return as a laborer. Moreover, the latter privilege was but *statute* given. So that prior to the act of 1893 no fair contention could be made that such a case involved the construction of the treaty or the construction or application of the Constitution; while the claim that that act gave an added right of return can involve only the construction of the act itself. These constitutional and treaty features were urged in vain in *Lem Moon Sing* v. *United States*, 158 U. S. 538, 541, 549, wherein this court said:

> To avoid misapprehension, it is proper to say that the court does not now express any opinion upon the question whether, under the facts stated in the application for the writ of *habeas corpus*, Lem Moon Sing was entitled, of right, under some law or treaty, to reenter the United States. We mean only to decide that that question has been constitutionally committed by Congress to named officers of the executive department of the government for final determination. (550)

II.

The finality of the decision of the immigration officers.

The act of August 18, 1894, 28 Stat. 390, and section 25 of the act of 1907, 34 Stat. 898, 907, each provide:

> In every case where an alien is excluded from admission into the United States under any law or treaty now existing or hereafter made, the decision of the appropriate immigration officers, if adverse to the admission of such alien, shall be final unless reversed on appeal to the Secretary . . . etc.

In *Lem Moon Sing* v. *United States*, *supra*, the court distinguishes the *Lau Ow Bew* case, 144 U. S. 47, relied on by appellant here, upon the ground that it arose before the act of 1894 was passed. The court said:

> He is none the less an alien because of his having a commercial domicil in this country. While he *lawfully* remains here he is entitled to the benefit of the guaranties of life, liberty, and property, secured by the Constitution to all persons, of whatever race, within the jurisdiction of the United States. * * * But when he *has voluntarily gone from the country*, and is beyond its jurisdiction, being an alien, he *cannot reenter the United States* in *violation of the will* of the government as *expressed* in *enactments of the law-making power*. He cannot, by reason merely of his domicil in the United States for purposes of business, demand that his claim to reenter this country by virtue of some statute or treaty, shall be determined ultimately, if not in the first instance, by the

courts of the United States, rather than exclusively and finally, in every instance, by executive officers charged by an act of Congress with the duty of executing the will of the political department of the government in respect of a matter wholly political in its character. He left the country subject to the exercise by Congress of every power it possessed under the Constitution. (547–548.)

* * * * *

Now the difference between that case [Lau Ow Bew] and the present one is that, by the statutes in force when the former was decided, the action of executive officers charged with the duty of enforcing the Chinese Exclusion Act of 1882, as amended in 1884, could be reached and controlled by the courts when necessary for the protection of rights given or secured by some statute or treaty relating to Chinese. But, by the act of 1894, the decision of the appropriate immigration or custom officers excluding an alien "from admission into the United States under any law or treaty," is made final in every case, unless, on appeal to the Secretary * * * it be reversed. (548–549)

* * * * *

* * * If the act of 1894 had done nothing more than appropriate money to enforce the Chinese Exclusion Act, the courts would have been authorized to protect any right the appellant had to enter the country, if he was of the class entitled to admission under existing laws or treaties, and was improperly excluded. But when Congress went further, and declared that in every case of an alien excluded

> by the decision of the appropriate immigration or customs officers "from admission into the United States under any law or treaty," such decision should be final, unless reversed by the Secretary * * *, the authority of the courts to review the decision of the executive officers was taken away. *United States* v. *Rogers*, 65 Fed. Rep. 787. If the act of 1894, thus construed, takes away from the alien appellant any right given by previous laws or treaties to reenter the country, the authority of Congress to do even that can not be questioned, although it is the duty of the courts not to construe an act of Congress as modifying or annulling a treaty made with another nation, unless its words clearly and plainly point to such a construction. *Chew Heong* v. *United States*, 112 U. S. 536, 539, 559; *Head Money Cases*, 112 U. S. 580, 599; *Whitney* v. *Robertson*, 124 U. S. 190, 195; *Chinese Exclusion Case*, 130 U. S. 581, 600. There is no room in the language of the act of 1894 to doubt that Congress intended that it should be interpreted as we have done in this case. (549)

The above case was affirmed and explained in *Li Sing* v. *United States*, 180 U. S. 486, 490.

It is to be noted, too, that in the *Lem Moon Sing* case it was conceded that that Chinaman had gained a lawful domicile in the United States. The assertion that such a concession was made in this case has been shown to be in direct opposition to the record; but even had it been true none the less would the decision of the inspector of immigration at San Francisco have been final.

III.

Chin Fong is not within the benefit of the act of 1893.

Because in every feature other than the lawful prior domicile the *Lem Moon Sing* case is identical with the case at bar, it should conclude the question. Conceding, however, for arguments' sake that though the immigration officers' decision is final on the fact of frauduient entry, it might be open to review as to the law question involved, *i. e.*, whether one entering unlawfully could gain a lawful merchant's status under the act, we insist that that question was correctly decided.

Treaties and prior statutes divided Chinese into two great classes, laborers and nonlaborers, according to the purpose with which they came to the United States. And the large aim of all the legislation was to make sure that none save those intended to be admitted should enter or remain in the United States. Mindful that the act of 1893 followed and was produced by the *Lau Ow Bew* decision of this court declaring to a domiciled merchant an unrestricted right to go and come, it would seem plain that Congress intended the legislation to restrict and not to enlarge the privilege. The "treaty-merchant" class was the only one prior to its passage that could claim a right of return as a merchant, and the statute seems to have dealt only with those who could claim, and were claiming, a right of return on this ground. As to them, it considerably narrowed the definition of the word "merchant" and required an added showing of

at least a year's merchandizing. We are advised that in practice, however, the immigration officers have recognized the right of one entering as other than a merchant, even a laborer, to change to a merchant's status under this act and gain a return privilege after a year's conduct of such a business, even though in the case of a laborer the business or his interest therein be of less value than $1,000.

For the purposes of this case it is not necessary to determine whether the Department of Labor has or has not correctly construed the act. Conceding that it might be so read and that it, therefore, enlarged the privilege of return as to laborers, though restricting it as to treaty merchants, it is yet undeniable that Congress never meant to say to the Chinese—

> If you can steal into the United States in violation of law and hide yourself from the officials long enough to carry on a merchandising business for a year without their knowledge, though for 364 days of the year you were subject to arrest and deportation, by passing successfully the 365th day you shall be rewarded by being given a lawful domicile—a right to return to the United States if ever you leave them.

This court has held that the restrictions and deportation provisions of the general immigration act of 1907 apply to Chinese as well as to other aliens. *United States* v. *Wong You*, 223 U. S. 67, 69, 70. To uphold appellant's contention would be to read out of the operation of the act of 1907, contrary to

the *Wong You* decision, every Chinaman who could manage to stay in the mercantile business for one year, with the result that Chinese epileptics, consumptives, felons, anarchists, and panderers could all, by an initial unlawful entry and after persistent unlawful presence, with a merchandising feature annexed, gain an absolute and unassailable right to remain in and return to the United States.

It is idle to say—as does appellant—that this act gave a naked right to return so that the officers are bound to let the Chinamen enter, but that after admission they may seize them and deport them. Congress never contemplated any such absurdity. If so read, the immigration officers could seize for deportation, and deport, at any time after the completion of the year's period of merchandising, but the deported men could return on the first boat and force a right of reentry and be again subject to deportation. The Chinamen, to be affected by the act of 1893, were those, and those only, who, if they chose to go and return, could defend their right to remain after their return, and who, if they chose to stay after accomplishing their year of merchandising, could defend their right to stay in the United States.

WILLIAM WALLACE, JR.,
Assistant Attorney General.

APRIL, 1916.

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No. 664.

In the Supreme Court of the United States

October Term, 1915

CHIN KING, APPELLANT,

vs.

DANIEL W. HAKER, COMMISSIONER OF IMMIGRATION FOR THE PORT OF SAN FRANCISCO.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF CALIFORNIA.

MOTION TO ADVANCE.

In the Supreme Court of the United States.

OCTOBER TERM, 1915.

CHIN FONG, APPELLANT.
v.
SAMUEL W. BACKUS, COMMISSIONER OF Immigration for the Port of San Francisco. } No. 664.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF CALIFORNIA.

MOTION TO ADVANCE.

Comes now the Solicitor General, appearing on behalf of the appellee, and respectfully moves the court to advance the above-entitled cause for hearing on a day convenient to the court.

Chin Fong, a Chinese subject, claiming to be a merchant in New York City, and desiring to make a temporary visit to China, made application to the immigration authorities at that point to preinvestigate his status as a Chinese merchant so that he might have issued to him a return merchant's certificate which would insure his immediate landing upon his return to the United States. An examination was conducted and it was reported that Chin Fong had been a merchant for more than a year prior to said application.

Thereafter the application and evidence taken thereon were forwarded to the Immigration Officer at the port of Seattle, Wash., through which port Chin Fong desired to depart for China, which officer denied the application on the ground that the original entry of the applicant was *surreptitious*. On appeal to the Secretary of Commerce and Labor the action of the Immigration Officer was sustained.

Said Chin Fong nevertheless departed for China, and upon his return made application to the Commissioner of Immigration at the port of San Francisco to reenter the United States as a *returning Chinese merchant*. The application was denied on the ground that the original entry of the applicant was *surreptitious*, and on appeal to the Secretary of Commerce and Labor the denial was sustained.

Thereupon he filed a petition for a writ of *habeas corpus* in the District Court of the United States for the Northern District of California, a demurrer to which was sustained and the application for the writ denied. (213 Fed. 288.)

Thereafter Chin Guy Get filed in the same District Court, for and on behalf of said Chin Fong, the amended petition herein on the grounds, among others, that the Commissioner of Immigration of the port of San Francisco and the Secretary of Labor had acted in excess of their jurisdiction, and that the right of Chin Fong to make the temporary visit to China hereinbefore mentioned was guaranteed by the Treaty between the United States and China of November 17, 1880.

A demurrer to this amended petition was sustained, an appeal prosecuted direct to this court, and said Chin Fong is now at large on bail.

The case is of importance to the Department of Labor, and especially the Bureau of Immigration, in the enforcement of the laws governing the admission and deportation of Chinese, and for that reason an early determination thereof is desirable.

It will be agreeable to counsel on both sides to have the case assigned for April 3, if that date is satisfactory to the court.

JOHN W. DAVIS,
Solicitor General.

JANUARY, 1916.

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CASES ADJUDGED

IN THE

SUPREME COURT OF THE UNITED STATES

AT

OCTOBER TERM, 1915.

CHIN FONG *v.* BACKUS, COMMISSIONER OF IMMIGRATION FOR THE PORT OF SAN FRANCISCO.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF CALIFORNIA.

No. 664. Argued April 5, 6, 1916.—Decided April 17, 1916.

Where the right of a person of Chinese descent to enter this country depends, as in this case, upon the statutes regulating Chinese immigration and not upon the construction of provisions of treaties relating thereto, a direct appeal will not lie to this court under § 238, Jud. Code, from a judgment dismissing a petition for *habeas corpus* of a Chinese person detained for deportation.

The status of a Chinese merchant, as defined by the treaty with China of 1880, is that acquired in China and not in this country.

THE facts, which involve the jurisdiction of this court of appeals from the District Court under § 238, Judicial Code, are stated in the opinion.

Mr. Jackson H. Ralston, with whom *Mr. William E. Richardson* was on the brief, for appellant.

Mr. Assistant Attorney General William Wallace, Jr., for the appellee.

MR. JUSTICE MCKENNA delivered the opinion of the court.

Appeal from a judgment dismissing a petition for *habeas corpus* and remanding petitioner to the custody of the Commissioner of Immigration for the Port of San Francisco, in whose custody he was, pending petitioner's deportation.

A summary of the petition made by the District Court is as follows:

"Petitioner Chin Fong, who had been a resident of the United States for a number of years, departed for China in November, 1912; that before he left he applied for a pre-investigation as to his status as a merchant, and a certificate was denied him on the ground that his original entry into this country was surreptitious. Notwithstanding this denial the petitioner left the country, and is now endeavoring to re-enter as a returning Chinese merchant; that he presents the affidavits of a member of the New York firm to which he claims to belong and of two reputable Americans supporting his claim; that notwithstanding these facts he has been denied admission and ordered deported on the same ground that his pre-investigation certificate was denied, that is to say, because his original entry was surreptitious; that in so deciding the immigration department has exceeded its authority, as that question can only be determined under the Exclusion laws by a Justice, Judge or Commissioner."

A demurrer was interposed to the petition which was sustained, the court saying: "Had the petitioner been content to remain in this country he could have been deported only after a hearing before a Justice, Judge or Commissioner. But as he left the country voluntarily, and even after a pre-investigation certificate was denied him, the question of his right to re-entry lies peculiarly with the immigration department, and as they have found

that he is not entitled to re-enter such finding cannot be disturbed. A different rule prevails, and a different tribunal determines in the case of a Chinese applying to enter from that of one already in this country whom it is sought to deport, under the Exclusion laws."

The decision of the court is contested and it is asserted (1) that the petition was sufficient to entitle petitioner to a discharge; (2) that the Commissioner of Immigration and Secretary of Labor could not require a greater and different degree of proof than that specified in § 2 of the act of Congress of May 5, 1892, c. 60, 27 Stat. 25, entitled "An Act to Prohibit the coming of Chinese persons into the United States"; (3) that petitioner furnished the degree of proof required by the law; (4) that the rights guaranteed petitioner under the treaty between the United States and China concerning immigration, November 17, 1880, were unduly and unlawfully infringed, and (5) that the decision of the Commissioner was against the law and was an abuse of discretion.

The appeal is direct from the District Court and can only be sustained against the motion of the United States to dismiss for want of jurisdiction in this court if there is a substantial question under the Constitution of the United States or a treaty made under their authority, § 238 of the Judicial Code permitting an appeal from a District Court when a constitutional question is involved and in any case "in which . . . the validity or construction of any treaty made under its [United States] authority is drawn in question."

It will be observed that appellant based his right to land solely on the ground that he had been a merchant in the United States before his departure to China and that, therefore, it was not competent for the immigration officers to inquire or determine whether his original entry into the United States was open or surreptitious and his stay therein legal or illegal. "The principal proposition that

we desire to maintain," counsel say, "and which has apparently been ignored by the Department of Labor, is that when Congress has definitely fixed the tests and qualifications attendant upon the determination of a given act, it is not within the power of an administrative officer to add to or subtract from the congressional rule." The case of *Lau Ow Bew* v. *United States*, 144 U. S. 47, is cited. For the "congressional rule" counsel refer to § 2 of the act of November 3, 1893 (28 Stat. 78), which reads as follows:

"Where an application is made by a Chinaman for entrance into the United States on the ground that he was formerly engaged in this country as a merchant, he shall establish by the testimony of two credible witnesses other than Chinese the fact that he conducted such business as hereinbefore defined for at least one year before his departure from the United States, and that during such year he was not engaged in the performance of any manual labor, except such as was necessary in the conduct of his business as such merchant, and in default of such proof shall be refused landing."

It is contended that the section requires proof by a Chinaman seeking entrance into the United States of two facts only—(1) that he had been a merchant for one year before his departure, and (2) that during such time he had not engaged in manual labor except such as was necessary in the conduct of his business as such merchant. These were the only conditions of the right to enter, it is contended, and it was an irrelevant inquiry whether he "originally entered as a laborer or even surreptitiously." And in emphasis counsel say, "The manner of entry was entirely ignored by Congress."

These being the conditions, it is hence asserted that if the Department of Labor may superadd one qualification it may another "until the law becomes entirely unrecognizable." So far manifestly there is nothing but an appeal to the statute, but the treaty is attempted to be invoked

by the following: "Such a course [the addition to the qualifications of the statute] would be in plain derogation of the treaty obligations between the United States and China, allowing to Chinese merchants freedom of egress and ingress in the manner permitted to citizens of the most favored nations, the essential fact by law and treaty being merely that of mercantile status."

No provision of the treaty is cited from which the contention is an applicable deduction, nor are we disposed to quote and comment on the entire treaty in answer to the contention. See 22 Stat. 826, Nov. 17, 1880; also *Lau Ow Bew* v. *United States*, *supra*. The "merchant" defined by it does not include petitioner. It was the definition of the status acquired in China, not acquired in the United States, and, having been acquired in China, gave access to the United States and after access freedom of movement as citizens of the most favored nations. And this privilege was given as well to Chinese laborers then (1880) in the United States.

We think, therefore, there is no substantial merit in the contention that the case involves the construction of a treaty and that the rights of petitioner can rest only upon the statutes regulating Chinese immigration. So concluding we are not called upon to decide or express opinion whether petitioner's original entry into the United States and his subsequent residence therein were illegal and whether he could acquire by either a status which the immigration officers were without power to disregard.

Dismissed.

MR. JUSTICE MCREYNOLDS took no part in the consideration and decision of this case.